

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(1) GENERAL FRAMEWORK OF THE PRISON SYSTEM/501. Legislative framework.

PRISONS (

1. ADMINISTRATION AND ESTABLISHMENT

(1) GENERAL FRAMEWORK OF THE PRISON SYSTEM

501. Legislative framework.

The principal source of law relating to prisons is the Prison Act 1952¹, which identifies the prison authorities and describes their general duties², provides for the personnel of the prison service and the administration of the prison system³, allows for the confinement of prisoners and the provision of prison accommodation⁴, and empowers the Secretary of State⁵ to make rules for the regulation and management of prisons and other penal institutions⁶ and for the classification, treatment, employment, discipline and control of persons detained there⁷. This does not include a power to make rules which would deny or interfere with a prisoner's human rights, particularly the right to have unimpeded access to a court⁸ or to legal advice and assistance in connection with the possible institution of legal proceedings⁹ and the right to receive visits from a responsible journalist investigating a possible miscarriage of justice¹⁰.

1 In general, the Prison Act 1952 applies only to England and Wales (see s 55(4), (5) (s 55(4) amended by the Criminal Justice Act 1961 s 41(1), (3), Sch 4; and the Statute Law (Repeals) Act 1993)). There is a separate statute for Scotland: see the Prisons (Scotland) Act 1952.

Owing to industrial action by prison officers in 1980, the Imprisonment (Temporary Provisions) Act 1980 was passed. Most of its provisions have now been repealed but s 6 (as amended) remains in force and provides for the temporary detention in police custody of persons where it is not reasonably practicable to secure their admission to a prison, remand centre, secure training centre or young offender institution: see PARA 538 post.

2 See eg the Prison Act 1952 ss 1, 3-5 (as amended), 5A (as added), 6 (as amended); and PARA 505 et seq post.

3 See eg ibid ss 3, 7 (both as amended), 8, 8A (as added), 9-11 (ss 10, 11 as amended); and PARAS 515 et seq, 580, 584 post.

4 See eg ibid ss 12, 14, 33 (as amended), 35 (as substituted), 36 (as amended); and PARAS 529 et seq, 573, 594 post.

5 As to the Secretary of State see PARA 505 post.

6 I.e. remand centres, young offender institutions or secure training centres: see the Prison Act 1952 s 47(1) (as amended: see note 7 infra). As to remand centres see PARA 701-800 post; as to young offender institutions see PARA 643 et seq post; and as to secure training centres see PARA 657 et seq post.

7 See ibid s 47(1) (amended by the Criminal Justice and Public Order Act 1994 s 6); and PARA 502 post. As to the rules made see eg the Prison Rules 1999, SI 1999/728; the Young Offender Institution Rules 1988, SI 1998/1422 (as amended); and the Secure Training Centre Rules 1998, SI 1998/472.

8 *Raymond v Honey* [1983] 1 AC 1, [1982] 1 All ER 756, HL. See PARA 606 et seq post.

9 *R v Secretary of State for the Home Department, ex p Leech* [1994] QB 198, [1993] 4 All ER 539, CA. See also *R v Secretary of State for the Home Department, ex p Anderson* [1984] QB 778, [1984] 1 All ER 920, where

the Divisional Court quashed the provisions of a Prison Service Standing Order (known as the 'simultaneous ventilation' rule) which sought to restrict the circumstances in which a prisoner could contact a solicitor by requiring the prisoner to lodge an internal complaint as a pre-requisite to seeing a lawyer.

10 See *R v Secretary of State for the Home Department, ex p Simms* [1999] 3 All ER 400, [1999] 3 WLR 328, HL; and PARA 571 note 11 post.

UPDATE

501 Legislative framework

NOTE 1--See also Prison Act 1952 s 55(6) (added by Immigration, Asylum and Nationality Act 2006 s 46(2)).

NOTE 7--SI 1999/728 amended: SI 2009/3082. SI 1998/472 amended: SI 2003/3005.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(1) GENERAL FRAMEWORK OF THE PRISON SYSTEM/502. Prison rules.

502. Prison rules.

Rules made by the Secretary of State¹ must ensure that a person who is charged with a disciplinary offence is given a proper opportunity to present his case². They must also provide for the special treatment of unconvicted and civil prisoners³; and for the inspection of secure training centres and the appointment of independent persons to visit secure training centres and to whom representations may be made by offenders detained in secure training centres⁴. They may also provide (1) for the training of particular classes of person and their allocation for that purpose to any prison or other institution in which they may be lawfully detained⁵; (2) for the temporary release of convicted and sentenced prisoners⁶; (3) for dealing with money or articles sent to prisoners in the post⁷; (4) for the testing of prisoners for drugs or alcohol⁸; and (5) for dealing with appellants in connection with any right to be present at their appeal⁹. The principal rules are the Prison Rules 1999¹⁰. The Secretary of State may also make regulations as to the measuring and photographing of prisoners¹¹.

The power to make such rules and regulations is exercisable by statutory instrument¹². In general such a statutory instrument is subject to annulment by resolution of either House of Parliament¹³; but a statutory instrument containing regulations on photographing and measuring prisoners merely has to be laid before Parliament¹⁴.

1 The rules in addition to those which the Secretary of State may make as to the regulation and management of prisons and the classification, treatment, employment etc of prisoners, as to which see PARA 501 ante. As to the Secretary of State see PARA 505 post.

2 See the Prison Act 1952 s 47(2); and PARA 600 post.

3 See *ibid* s 47(4)(d) (amended by the Criminal Justice Act 1967 ss 66(5), 103(2), Sch 7 Pt I); and PARA 694 et seq post. 'Special treatment' means the treatment accorded to the prisoner as a whole during his period of detention and not his day-to-day treatment: *Silverman v Prison Comrs* [1955] Crim LR 116; *affd* on the facts [1956] Crim LR 56, CA.

4 See the Prison Act 1952 s 47(4A) (added by the Criminal Justice and Public Order Act 1994 s 6); and PARA 657 et seq post.

5 Prison Act 1952 s 47(3).

6 See *ibid* s 47(5) (amended by the Criminal Justice Act 1961 s 41(1), (3), Sch 4; the Courts Act 1971 s 56(1), Sch 8 para 33; the Criminal Justice Act 1982 s 77, Sch 14 para 7(b); and the Criminal Justice and Public Order Act 1994 s 6); and PARA 612 post.

7 See the Criminal Justice Act 1961 s 23(2); and PARA 567 post.

8 See the Prison Act 1952 ss 16A, 16B (both as added); and PARAS 545-546 post.

9 See the Criminal Appeal Act 1968 s 22(1); and PARA 610 post. See also the Courts-Martial (Appeals) Act 1968 s 52(d); and ARMED FORCES.

10 The Prison Rules 1999, SI 1999/728, which came into force on 1 April 1999 (see r 1) and revoke and replace the Prison Rules 1964, SI 1964/388 (as amended) (see the Prison Rules 1999, SI 1999/728, r 85, Schedule).

11 See the Prison Act 1952 s 16; and PARA 543 post.

12 *Ibid* s 52(1).

13 See the Criminal Justice Act 1967 s 66(4).

14 See the Prison Act 1952 s 52(2) (amended by the Criminal Justice Act 1967 ss 66(4), 103(2), Sch 7, Pt I).

UPDATE

502 Prison rules

TEXT AND NOTES--A statutory instrument containing an order under the 1952 Act Sch A1 (see PARA 508A) is subject to annulment in pursuance of a resolution of either House of Parliament: s 52(2A) (added by Police and Justice Act 2006 Sch 14 para 1(3)).

NOTE 7--1961 Act s 23(2) amended: SI 2001/1149.

NOTE 10--SI 1999/728 amended: SI 2009/3082.

NOTE 12--1952 Act s 52(1) amended: 2006 Act Sch 14 para 1(2); Offender Management Act 2007 s 22(2)(a).

NOTE 14--See also 1952 Act s 52(2A), (2B) (added by 2007 Act s 22(2)(b)).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(1) GENERAL FRAMEWORK OF THE PRISON SYSTEM/503. Administrative framework.

503. Administrative framework.

Instructions and guidance directed at members of the Prison Service are contained in Prison Service Instructions (PSIs), Prison Service Orders (PSOs) and Information and Practice documents¹. PSIs are short term directions which include a mandatory element requiring strict compliance by Prison Service staff. An implementation date and date of expiry appears on each instruction. PSOs are permanent directions which replace the previous mixture of Standing Orders, Circular Instructions, Instructions to Governors and manuals containing mandatory requirements. Information and Practice documents are issued to advise, guide and inform Prison Service staff and are not mandatory. The purpose of the Prison Service Instructions system is to indicate how the extensive discretion of the prison authorities under the Prison Rules 1999² is to be exercised, the aims being to promote consistency and uniformity in their application and to standardise practice in the administration of prisons and the treatment of prisoners. The Prison Rules 1999 do not explicitly confer a power to make instructions or orders, although some provisions are subject to the directions of the Secretary of State³, which will be expressed by PSIs or PSOs. Any policy contained in a PSI or a PSO will only be lawful to the extent that it is *intra vires* the Prison Act 1952 and the Prison Rules 1999⁴.

¹ The *Report of the Enquiry into the Escape of Six Prisoners from the Special Secure Unit at Whitemoor Prison, Cambridgeshire, on Friday 9 September 1994* (Cm 2741) (1995) ('the Woodcock Report') recommended that the Prison Service should provide a clear framework within which prison governors are expected to operate. It required that levels of autonomy, responsibility and accountability should be clearly published, making it plain which aspects of existing manuals and national instructions are mandatory, advisory or purely informative: see section 10 para 60. The Prison Service Instructions System was created in 1997 to put this recommendation into effect with the intention of eventually replacing the old system of Standing Orders, Circular Instructions, Instructions to Governors and Advice to Governors.

² I.e. the Prison Rules 1999, SI 1999/728: see PARAS 501-502 ante.

³ See eg *ibid* rr 32(2) (education), 33 (library books); and PARA 576 post. As to the Secretary of State see PARA 505 post.

⁴ For references to the legal status of standing orders and other forms of administrative guidance see *Raymond v Honey* [1983] 1 AC 1 at 12-13, [1982] 1 All ER 756 at 760-761, HL, per Lord Wilberforce; *R v Secretary of State for the Home Department, ex p Leech* [1994] QB 198 at 202, [1993] 4 All ER 539 at 542, CA, per Steyn LJ. See also *R v Secretary of State for the Home Department, ex p Simms* [1999] 3 All ER 400, [1999] 3 WLR 328, HL.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(1) GENERAL FRAMEWORK OF THE PRISON SYSTEM/504. International standards.

504. International standards.

With the incorporation of the substantive provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)¹ into United Kingdom law through the Human Rights Act 1998 it will become possible for prisoners to invoke such rights in the domestic courts².

The same is not true of the International Covenant on Civil and Political Rights (1966) (ICCPR)³, drawn up under the auspices of the United Nations, which contains rights broadly corresponding to those in the Convention⁴. Whereas the United Kingdom government has ratified the ICCPR, which is therefore binding in international law, the optional right of individual petition has not been accepted. The enforcement of the ICCPR is supervised by an obligation on state parties to submit periodic reports to the Human Rights Committee⁵. The ICCPR is a treaty obligation and has no direct effect in domestic law although it is capable of giving rise to a legitimate expectation that the executive will act in accordance with its provisions⁶.

The Government of the United Kingdom is also a signatory to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)⁷. The Convention introduces a new enforcement mechanism into international human rights law by providing for regular visits by an independent committee (the 'European Committee for the Prevention of Torture') to places where persons are deprived of their liberty by a public authority⁸.

The United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment⁹, to which the United Kingdom is also a signatory, principally focuses on the prevention and punishment of torture. There is an obligation on all state parties to submit reports to the committee established under the Convention every four years¹⁰. The United Kingdom government does not permit individual complaints to be made to the committee¹¹.

There is a further body of rules and standards which focus on the treatment of persons in detention. Of greatest relevance are the United Nations Standard Minimum Rules for the Treatment of Prisoners (1955)¹² and the European Prison Rules (1987)¹³. Neither of these instruments is legally binding nor does any enforcement machinery exist but they do formulate minimum standards of a universal nature to which reference may be made in international tribunals (such as the European Court of Human Rights) and the domestic courts. Rather than revise its Standard Minimum Rules over time, the United Nations has tended to adopt a series of guidelines with respect to the treatment of people in detention. These include the Basic Principles for the Treatment of Prisoners (1990)¹⁴, the Standard Minimum Rules for the Administration of Juvenile Justice (1985) (also known as the 'Beijing Rules')¹⁵, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)¹⁶ and the Body of Principles for the Protection of All Persons Under any Form of Detention (1988)¹⁷.

1 The Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 122 et seq. Even after the incorporation of the Convention into United Kingdom law, prisoners who have exhausted their domestic remedies can, like other litigants, still take their cases to the European Court of Human Rights in Strasbourg.

'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706 preamble art I; Interpretation Act 1978 s

22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3.

2 As from a day to be appointed, certain rights and freedoms in the Convention are incorporated into domestic law: see the Human Rights Act 1998 s 1, Sch 1. At the date at which this volume states the law no such day had been appointed. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 Ie the International Covenant on Civil and Political Rights (New York, 16 December 1966; TS 6 (1977); Cmnd 6702): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 103 et seq.

4 There is no specific international convention exclusively governing the treatment of prisoners. The ICCPR Art 10 goes furthest and contains two specific provisions, namely, that adults in custody are to be separated from juveniles and that the accused is to be separated from the convicted. It also contains two general propositions. The first of these is that people deprived of their liberty must be treated with humanity and respect for the inherent dignity of the human person; and the second is that the essential aim of the prison system should be reformation and social rehabilitation of prisoners.

5 See the ICCPR Art 40. As to the Human Rights Committee see Art 28; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 103.

6 See *R v Secretary of State for the Home Department, ex p Ahmed* (30 July 1998, unreported), CA, in which the Court of Appeal adopted the reasoning of the High Court of Australia in *Minister of State for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, Aust HC. See also *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418, sub nom *MacLaine Watson & Co Ltd v Department of Trade and Industry* [1989] 3 All ER 523, HL; *R v Secretary of State for the Home Department, ex p Brind* [1991] 1 AC 696, sub nom *Brind v Secretary of State for the Home Department* [1991] 1 All ER 720, HL; *R v Secretary of State for the Home Department, ex p Venables* [1998] AC 407, [1997] 3 All ER 97, HL; *R v Secretary of State for the Home Department, ex p Launder* [1997] 3 All ER 961, [1997] 1 WLR 839, HL; *Thomas & Hilaire v Baptiste* [1999] 3 WLR 249, PC; *R v DPP, ex p Kebilene* [1999] 3 WLR 175, Times, 31 March, DC. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS.

7 Ie the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (26 November 1987 (Council of Europe, ETS no 126); TS 5 (1991); Cm 1634).

8 See the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) Art 2.

9 Ie the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment (Misc 12 (1985); Cm 9593).

10 United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment Art 19.

11 In order to do so, it would have to make a declaration in accordance with the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment Art 22(1).

12 Economic and Social Council (1957) Res 663C (XXIV).

13 Appendix to CM Rec R (87) 3; 9 EHRR 513 (1987).

14 GA Resn 45/111, annex, GAOR, 45th Session, Supp 49A, p 200, UN Doc A/45/49 (1990).

15 GA Resn 40/33, annex, GAOR, 40th Session, Supp 53, p 207, UN Doc A/40/53 (1985).

16 GA Resn 45/113, annex, GAOR, 45th Session, Supp 49A, p 205, UN Doc A/45/49 (1990).

17 GA Resn 43/173, annex, GAOR, 43rd Session, Supp 49, p 298, UN Doc A/43/49 (1988).

UPDATE

504 International standards

NOTE 2--Day appointed 2 October 2000: SI 2000/1851.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(2) PRISON AUTHORITIES/(i) Central Authorities/505. The Secretary of State.

(2) PRISON AUTHORITIES

(i) Central Authorities

505. The Secretary of State.

The Secretary of State¹ exercises all powers and jurisdiction which, before the commencement of the Prison Act 1877², were exercised by other authorities³. The Secretary of State assumed the functions of the Prison Commissioners, following their dissolution⁴. The Secretary of State has the general superintendence of prisons and must make the contracts and perform the other acts necessary for the maintenance of prisons and prisoners⁵. He is also the rule-making authority⁶. He may, for the purposes of the Prison Act 1952, appoint such officers and employ such other persons as he may determine⁷.

He must issue an annual report on every prison, which must be laid before Parliament⁸. It must contain (1) a statement of the accommodation of each prison with the daily average and highest number of prisoners confined there⁹; (2) particulars of the work done by prisoners in each prison, including the kind and quantities of articles produced and the number of prisoners employed¹⁰; and (3) a statement of the punishments inflicted in each prison and the offences for which they were inflicted¹¹.

1 I.e. one of Her Majesty's Principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. As to the office of Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355. The Prison Act 1952 refers simply to 'the Secretary of State', but in practice it is the Secretary of State for the Home Department (the 'Home Secretary') who has full ministerial responsibility for every aspect of the Prison Service. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 466-470.

2 I.e. before 12 July 1877. The Prison Act 1877 was repealed by the Prison Act 1952 s 54(2), Sch 4 (repealed).

3 See *ibid* s 1.

4 See the Prison Commissioners Dissolution Order 1963, SI 1963/597, art 2(1), made pursuant to the Criminal Justice Act 1961 s 24.

5 Prison Act 1952 s 4(1) (amended by the Prison Commissioners Dissolution Order 1963, SI 1963/597, art 3(2), Sch 1). The reference to a power to make the contracts necessary for the maintenance of prisons and prisoners is to be distinguished from the power to contract out the running of any prison under the Criminal Justice Act 1991 (see PARA 532 post).

6 See PARAS 501-502 ante.

7 See the Prison Act 1952 s 3(1) (amended by the Prison Commissioners Dissolution Order 1963, SI 1963/597, Sch 1; and the Criminal Justice and Public Order Act 1994 s 168(2), Sch 10 para 7). He must have the sanction of the Treasury as to the number of officers and employees: see the Prison Act 1952 s 3(1) (as so amended).

8 *Ibid* s 5(1) (substituted by the Prison Commissioners Dissolution Order 1963, SI 1963/597, Sch 1). The *Prison Service Annual report and accounts* is published each year as a House of Commons paper. In addition, there are two command papers published annually, namely *Prison Statistics England and Wales* and *Statistics of Offences against prison discipline and punishments, England and Wales*.

9 Prison Act 1952 s 5(2)(a).

10 See *ibid* s 5(2)(b).

11 Ibid s 5(2)(c) (amended by the Criminal Justice Act 1967 s 103(2), Sch 7 Pt I).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(2) PRISON AUTHORITIES/(i) Central Authorities/506. Liability of the Secretary of State.

506. Liability of the Secretary of State.

The Crown is liable for the torts of its servants and agents within prisons¹, and proceedings in respect of them may be brought against the Home Office², but the Secretary of State is not criminally liable for any occurrence in a prison by virtue of the fact that prisons are vested in him³.

1 See the Crown Proceedings Act 1947 s 2(1)(a); *Ellis v Home Office* [1953] 2 QB 135, [1953] 2 All ER 149 at 154, CA, per Singleton LJ; para 565 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 382; CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 103.

The existence of a contract between the Secretary of State and a private contractor appointed to run a contracted-out prison does not give any right to individual prisoners *vis-à-vis* the contractor because of the principle of privity of contract. Prisoners' remedies in respect of allegedly unlawful treatment in a contracted-out prison remain the same as in a state prison but in almost all cases the proper defendant will be the private contractor rather than the Home Office. The proper respondent in an application for judicial review based on a failure to enforce a contract will be the Home Secretary. As to contracted-out prisons see PARAS 532-535 post. As to the Secretary of State see PARA 505 ante. As to the Home Office see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 466-470.

2 See the Crown Proceedings Act 1947 s 17(3); and CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 119.

3 *R v Morton Brown, ex p Ainsworth* (1909) 74 JP 53, DC.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(2) PRISON AUTHORITIES/(i) Central Authorities/507. Organisation of the Prison Service.

507. Organisation of the Prison Service.

The Home Secretary is responsible for the prison system¹. The Prison Service (which is now an Executive Agency²) is charged with administering that system. Subject to the direction of ministers, the Prison Service Strategy Board within the Prison Service formulates major policy and takes important decisions. The Board, which is chaired by the minister in the Home Office designated to support the Secretary of State on prison matters, comprises non-executive members appointed by the Secretary of State, together with the Director General and Director, Sentencing and Correctional Policy and other executive directors of the Prison Service as agreed between the designated minister and the Director General³. The executive directors are the Director of Security; the Director of Healthcare; the Director of Finance; the Director of Personnel; the Director of High Security Prisons; the Director of Corporate Affairs; the Director of Regimes; the Director of Operations North; and the Director of Operations South⁴. The latter two directors are in effect operational line managers with responsibility for the 12 area managers who form the next tier in the system⁵.

1 See PARA 505 ante. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 466-470.

2 As to executive agencies generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 551.

3 Prison Service Framework Document para 3.4.

4 See the Prison Service Staff Directory (2nd Edn, June 1999). The present administrative structure is based on reforms recommended in the *Prison Service Management Review* (1991) conducted by Admiral Sir Raymond Lygo (1991) and in the Woolf Report (*Prison Disturbances, April 1990* (Cm 1456) (1991). The *Review of Prison Service Security in England and Wales and the Escape from Parkhurst Prison on 3 January 1995* (Cm 3020) (1995) ('the Learmont Report') was strongly critical of the bureaucratic complexity of the management of the Prison Service: see PARAS 3.28-3.88.

5 Each area manager is responsible for approximately 12 penal establishments based on geographical divisions of England and Wales: see the Civil Service Year Book 1998/99 cols 507-509.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(2) PRISON AUTHORITIES/(i) Central Authorities/508. Inspection of prisons.

508. Inspection of prisons.

Duly authorised officers of the Secretary of State¹ must visit all prisons and examine the state of buildings, the conduct of officers, the treatment and conduct of prisoners and all other matters concerning the management of prisons². They must ensure that the provisions of the Prison Act 1952 and rules made under that Act are complied with³. These tasks are carried out by the Directors of Operations North and South and the area managers below them⁴.

Her Majesty may appoint a person to be Chief Inspector of Prisons⁵, whose duty it is to inspect or arrange for the inspection of prisons in England and Wales and to report to the Secretary of State on them⁶. He must in particular report to the Secretary of State on the treatment of prisoners and conditions in prisons⁷. The Secretary of State may refer specific matters connected with prisons and prisoners in them to the Chief Inspector and direct him to report on them⁸. The Chief Inspector must in each year submit a report to the Secretary of State, a copy of which must be laid before Parliament⁹. The Chief Inspector is to be paid such salary and allowances as the Secretary of State may with Treasury consent determine¹⁰.

1 As to the Secretary of State see PARA 505 ante.

2 Prison Act 1952 s 4(2) (amended by the Prison Commissioners Dissolution Order 1963, SI 1963/597, art 3(2), Sch 1).

3 Prison Act 1952 s 4(2) (as amended: see note 2 supra). The terms of s 4(2) (as amended) do not in any way oust the High Court's supervisory jurisdiction to grant judicial review in respect of the disciplinary and administrative decisions of prison governors and other prison officers: *Leech v Deputy Governor of Parkhurst Prison* [1988] AC 533, [1988] 1 All ER 485, HL; *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1992] 1 AC 58, sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733, HL.

4 As to the Directors of Operations North and South and the area managers below them see PARA 507 ante.

5 Prison Act 1952 s 5A(1) (s 5A added by the Criminal Justice Act 1982 s 57(1)).

6 Prison Act 1952 s 5A(2) (as added: see note 5 supra). The Chief Inspector's statutory duty is to inspect 'prisons', and his power to inspect does not extend to the conditions in which prisoners are detained in police cells under the Imprisonment (Temporary Provisions) Act 1980, as the terms of s 6 (as amended) contrast detention in a prison, remand centre, secure training centre or young offender institution with detention in the custody of a constable: see PARAS 501 note 1 ante, 538 post.

7 Prison Act 1952 s 5A(3) (as added: see note 5 supra).

8 Ibid s 5A(4) (as added: see note 5 supra).

9 See ibid s 5A(5) (as added: see note 5 supra). The report must be in such form as the Secretary of State may direct: see s 5A(5) (as so added).

10 Ibid s 5A(6) (as added: see note 5 supra).

UPDATE

508 Inspection of prisons

TEXT AND NOTES--See also Prison Act 1952 s 5A(5A), (5B) (substituted by Immigration, Asylum and Nationality Act 2006 s 46(1)).

NOTES 5-10--As to Her Majesty's Chief Inspector of Prisons, see PARA 508A.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(2) PRISON AUTHORITIES/(i) Central Authorities/508A. Her Majesty's Chief Inspector of Prisons.

508A. Her Majesty's Chief Inspector of Prisons.

The Chief Inspector may delegate any of his functions, to such extent as he may determine, to another public authority¹. The Chief Inspector must from time to time, or at such times as the Secretary of State may specify by order, prepare a document setting out what inspections he proposes to carry out (an 'inspection programme'), and a document setting out the manner in which he proposes to carry out his functions of inspecting and reporting (an 'inspection framework')². Before preparing an inspection programme or an inspection framework the Chief Inspector must consult the Secretary of State and (1) Her Majesty's Chief Inspector of Constabulary; (2) Her Majesty's Chief Inspector of the Crown Prosecution Service; (3) Her Majesty's Inspector of Probation for England and Wales; (4) Her Majesty's Chief Inspector of Court Administration; (5) Her Majesty's Chief Inspector of Education, Children's Services and Skills; (6) the Care Quality Commission; (7) the Audit Commission for Local Government and the National Health Service in England; (8) the Auditor General for Wales; and (9) any other person or body specified by an order made by the Secretary of State, and he must send to each of those persons or bodies a copy of each programme or framework once it is prepared³. The Secretary of State may by order specify the form that inspection programmes or inspection frameworks are to take⁴. Nothing in any inspection programme or inspection framework is to be read as preventing the Chief Inspector from making visits without notice⁵.

If (a) a specified person or body⁶ is proposing to carry out an inspection that would involve inspecting a specified organisation⁷; and (b) the Chief Inspector considers that the proposed inspection would impose an unreasonable burden on that organisation, or would do so if carried out in a particular manner, the Chief Inspector must, subject to certain provisions⁸, give a notice to that person or body not to carry out the proposed inspection, or not to carry out the proposed inspection, or not to carry it out in that manner⁹. The Secretary of State may by order specify cases or circumstances in which a notice need not, or may not, be given under these provisions regarding inspections by other inspectors of organisations within the Chief Inspector's remit¹⁰. Where a notice is given under these provisions, the proposed inspection is not to be carried out, or, as the case may be, is not to be carried out in the manner mentioned in the notice¹¹. The Secretary of State may by order make provision supplementing that made by these provisions, including in particular (i) provision about the form of notices; (ii) provision prescribing the period within which notices are to be given; (iii) provision prescribing circumstances in which notices are, or are not, to be made public; (iv) provision for revising or withdrawing notices; (v) provision for setting aside notices not validly given¹².

The Chief Inspector must co-operate with Her Majesty's Inspectors of Constabulary, Her Majesty's Chief Inspector of the Crown Prosecution Service, Her Majesty's Inspectorate of Probation for England and Wales, Her Majesty's Inspectorate of Court Administration, Her Majesty's Chief Inspector of Education, Children's Services and Skills, the Commission for Healthcare Audit and Inspection, the Commission for Social Care Inspection, the Audit Commission for Local Government and the National Health Service in England, the Auditor General for Wales, and any other public authority specified by an order made by the Secretary of State, where it is appropriate to do so for the efficient and effective discharge of his functions¹³. The Chief Inspector may act jointly with another public authority where it is appropriate to do so for the efficient and effective discharge of his functions¹⁴. The Chief Inspector, acting jointly with Her Majesty's Chief Inspector of Constabulary, Her Majesty's Chief Inspector of the Crown Prosecution Service, Her Majesty's Chief Inspector of Probation for England and Wales or Her Majesty's Chief Inspector of Court Administration, must prepare a

document (a 'joint inspection programme') setting out (A) what inspections he proposes to carry out in the exercise of the above power, and what inspections the chief inspectors, or their inspectorate, propose to carry out in the exercise of any corresponding powers conferred on them¹⁵. A joint inspection programme must be prepared from time to time or at such times as the Secretary of State, the Lord Chancellor and the Attorney General may jointly direct¹⁶. The Secretary of State, the Lord Chancellor and the Attorney General may by a joint direction specify the form that a joint inspection programme is to take¹⁷.

The Chief Inspector may if he thinks it appropriate to do so provide assistance to any other public authority for the purpose of the exercise by that authority of its functions¹⁸.

1 Prison Act 1952 s 5A(7), Sch A1 para 1(1) (s 5A(7), Sch A1 added by the Police and Justice Act 2006; 1952 Act Sch A1 amended by the Local Government and Public Involvement in Health Act 2007 Sch 9 para 1(2)(a), Sch 18 Pt 9; the Health and Social Care Act 2008 Sch 5 para 53, Sch 15 Pt 1; and SI 2008/912). If the carrying out of an inspection is delegated under the 1952 Act Sch A1 para 1(1) it is nevertheless to be regarded for the purposes of s 5A, Sch A1 as carried out by the Chief Inspector: Sch A1 para 1(2). In Sch A1 'public authority' includes any person certain of whose functions are functions of a public nature: Sch A1 para 1(3).

2 Ibid Sch A1 para 2(1).

3 Ibid Sch A1 para 2(2). The requirement in Sch A1 para 2(2) to consult, and to send copies to, a person or body listed in heads (1)-(10) is subject to any agreement made between the Chief Inspector and that person or body to waive the requirement in such cases or circumstances as may be specified in the agreement: Sch A1 para 2(3).

4 Ibid Sch A1 para 2(4).

5 Ibid Sch A1 para 2(5).

6 The specified persons or bodies are (1) Her Majesty's Inspectorate of Probation for England and Wales; (2) Her Majesty's Chief Inspector of Education, Children's Services and Skills; (3) the Care Quality Commission; (4) the Audit Commission for Local Government and the National Health Service in England: ibid Sch A1 para 3(2). The Secretary of State may be order amend Sch A1 para 3(2): Sch A1(3).

7 'Specified organisation' means a person or body specified by an order made by the Secretary of State: ibid Sch A1 para 3(4). A person or body may be specified under Sch A1 para 3(4) only if it exercises functions in relation to any prison or other institution or matter falling within the scope of the Chief Inspector's duties under s 5A (see PARA 508): Sch A1 para 3(5). A person or body may be specified under Sch A1 para 3(4) in relation to particular functions that it has; in the case of a person or body so specified, TEXT head (a) is to be read as referring to an inspection that would involve inspecting the discharge of any of its functions in relation to which it is specified: Sch A1 para 3(6). Her Majesty's Chief Inspector of Prisons (Specified Organisations) Order 2007, SI 2007/1173, specifies certain persons as organisations for the purposes of the 1952 Act Sch A1 para 3(4).

8 Ie ibid Sch A1 para 3(7) (see NOTE 10).

9 Ibid Sch A1 para 3(1).

10 Ibid Sch A1 para 3(7).

11 Ibid Sch A1 para 3(8). However, the Secretary of State, if satisfied that the proposed inspection (1) would not impose an unreasonable burden on the organisation in question, or (2) would not do so if carried out in a particular manner, may give consent to the inspection being carried out, or being carried out in that manner: Sch A1 para 3(9).

12 Ibid Sch A1 para 3(10).

13 Ibid Sch A1 para 4. See Her Majesty's Chief Inspector of Prisons (Specified Public Authority) Order 2009, SI 2009/570.

14 1952 Act Sch A1 para 5(1).

15 Ibid Sch A1 para 5(2), (3).

16 Ibid Sch A1 para 5(4). Sch A1 para 2(2), (3), (5) (see NOTES 3, 5) apply to a joint inspection programme as they apply to a document prepared under Sch A1 para 2: Sch A1 para 5(5).

17 Ibid Sch A1 para 5(6).

18 Ibid Sch A1 para 6(1). Assistance under Sch A1 para 6 may be provided on such terms, including terms as to payment, as the Chief Inspector thinks fit: Sch A1 para 6(2).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(2) PRISON AUTHORITIES/(i) Central Authorities/509. The Prisons Ombudsman.

509. The Prisons Ombudsman.

The non-statutory office of Prisons Ombudsman was created in 1994¹, in the exercise of the general powers of the Secretary of State² in relation to prisons and prisoners³. His office is independent of the Prison Service and he reports directly to the Secretary of State. His function is to investigate complaints submitted by individual prisoners who have failed to obtain satisfaction from the Prison Service request and complaints system⁴ and who are eligible in all other respects⁵.

Prisoners' complaints to the Prisons Ombudsman are confidential⁶. For the purpose of conducting an investigation into an eligible complaint, the Prisons Ombudsman has unfettered access to Prison Service documents⁷. Where documentation is obtained which would not normally be made public, the Prisons Ombudsman must not reveal it to the prisoner or in any way make public such documents⁸. Before issuing his final report, the Prisons Ombudsman must provide the Director General of the Prison Service with a draft⁹. Reports should be completed within a period of 12 weeks¹⁰. Following completion of his investigation, if the Prisons Ombudsman upholds a complaint he may make recommendations to the Director General¹¹.

The Prisons Ombudsman acts only on the basis of eligible complaints from prisoners and not on those from other individuals or organisations. His remit extends to consideration of the merits of matters complained of as well as procedural issues but he may not overturn a decision himself. His powers are confined to the making of a recommendation to the Director General of the Prison Service.

1 Instruction to Governors 69/1994. The creation of an independent complaints adjudicator had been recommended because the existing internal complaints schemes lacked a key feature, namely recourse to an independent person or body with power to review the decisions of the prison authorities: see *Prison Disturbances April 1990* (Cm 1456) (1991) ('the Woolf Report').

2 As to the Secretary of State see PARA 505 ante.

3 See the Prison Act 1952 s 1; and PARA 505 ante.

4 Before putting a grievance to the Prisons Ombudsman, a prisoner must first seek redress through the Prison Service request and complaints procedures (see PARA 572 post). This includes exhausting the right of appeal to Prison Service Headquarters (see PARA 572 post). Complaints will be considered for investigation by the Prisons Ombudsman if the prisoner is dissatisfied with the reply from the Prison Service or receives no reply within six weeks. All complaints must be submitted to the Prisons Ombudsman within one calendar month of receiving a substantive reply from the Prison Service although there is discretion to disapply this requirement where good reason exists for any delay or where the issues raised are so serious as to override the time limit. See *Prisons Ombudsman Annual Report 1998/9* (Cm 4369), Annex A 'Terms of Reference' paras 7, 8.

5 The Prisons Ombudsman's terms of reference (which may be altered at any time by the Secretary of State without recourse to Parliament) extend to the investigation of all decisions relating to individual prisoners taken by Prison Service staff, people acting as agents of the Prison Service, other people working in prisons and members of a Board of Visitors, with the exception of decisions involving the clinical judgment of a doctor: *Prisons Ombudsman Annual Report 1998/9* (Cm 4369), Annex A 'Terms of Reference' para 4. As to Boards of Visitors see PARAS 511-513 post.

Certain matters are specifically excluded from the Prisons Ombudsman's remit, namely any decision taken personally by a minister or official advice to ministers; the personal exercise by ministers of their function in the setting and review of tariff and the release of mandatory life sentence prisoners; actions and decisions outside the responsibility of the Prison Service, such as issues about conviction or sentence; cases currently the subject of civil litigation or criminal proceedings; and the decisions and recommendations of outside bodies including the police, the Crown Prosecution Service, the Immigration Service, the Parole Board and its Secretariat: *Prisons*

Ombudsman Annual Report 1998/9 (Cm 4369), Annex A 'Terms of Reference' para 5. As to the Parole Board see PARAS 618-619 post.

6 Prison Service Instruction to Governors 69/1994 (13).

7 *Prisons Ombudsman Annual Report 1998/9* (Cm 4369) Annex A 'Terms of Reference' para 11. Previously, documents could be obtained for the purpose of determining whether a complaint was eligible (eg this might have been necessary when assessing whether to extend the time limit for complaining, a matter which might turn on whether the delay was the fault of the Prison Service or the prisoner), but it is now in the discretion of the Prison Service to decide which documents should be disclosed for the purpose of determining eligibility: see *Prisons Ombudsman Annual Report 1998/9* (Cm 4369) Annex A 'Terms of Reference' para 9.

8 *Prisons Ombudsman Annual Report 1998/9* (Cm 4369) Annex A 'Terms of Reference' para 14. Such documentation includes sensitive material affecting security; or material relating to the health of a prisoner or the safety of a third party; or advice given to ministers: *Prisons Ombudsman Annual Report 1998/9* (Cm 4369) Annex A 'Terms of Reference' para 14.

9 *Prisons Ombudsman Annual Report 1998/9* (Cm 4369) Annex A 'Terms of Reference' para 16. As to the Director General of the Prison Service see PARA 507 ante.

10 *Prisons Ombudsman Annual Report 1998/9* (Cm 4369) Annex A 'Terms of Reference' para 19.

11 *Prisons Ombudsman Annual Report 1998/9* (Cm 4369) Annex A 'Terms of Reference' para 17.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(2) PRISON AUTHORITIES/(i) Central Authorities/510. Expenses.

510. Expenses.

All expenses incurred in the maintenance of prisons and of prisoners and all other expenses of the Secretary of State¹ incurred under the Prison Act 1952 must be defrayed out of money provided by Parliament². The maintenance of a prisoner includes all necessary expenses incurred in respect of the prisoner for food, clothing, custody and removal from one place to another, from the time of his committal to prison³ until his death or release⁴. In no case is a prisoner liable to pay the cost of his conveyance to prison⁵.

1 As to the Secretary of State see PARA 505 ante.

2 Prison Act 1952 s 51 (amended by the Prison Commissioners Dissolution Order 1963, SI 1963/597, art 3(2), Sch 1). For further provisions regarding payment in respect of certain matters bearing on the penal system see the Powers of Criminal Courts Act 1973 s 51 (as amended); and MAGISTRATES.

3 This refers to the act of the committing magistrate and not to the prisoner's reception into prison: *Mullins v Surrey County Treasurer* (1881) 7 App Cas 1, HL.

4 Prison Act 1952 s 53(2).

5 Ibid s 21. However, a prisoner may be charged the expenses in connection with his production in court: see PARA 609 post.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(2) PRISON AUTHORITIES/(ii) Boards of Visitors/511. Boards of Visitors.

(ii) Boards of Visitors

511. Boards of Visitors.

The Secretary of State¹ must appoint a Board of Visitors for every prison². Rules must be made prescribing their functions and, among other things, must require members to pay frequent visits to the prison³ and hear any complaints by the prisoners⁴ and report to the Secretary of State any matter which they consider it expedient to report⁵. Any board member may at any time enter the prison and must have free access to every part of it and to every prisoner⁶, who may be interviewed out of the sight and hearing of officers⁷, and to the records of the prison⁸. The Board of Visitors must make an annual report to the Secretary of State on the state of the prison and its administration, including in it any advice and suggestions considered appropriate⁹.

1 As to the Secretary of State see PARA 505 ante.

2 Prison Act 1952 s 6(2) (s 6(2), (3) amended by the Courts Act 1971 ss 53(3), 56(4), Sch 7 Pt II para 4, Sch 11 Pt IV).

3 See the Prison Rules 1999, SI 1999/728, r 79(1); and PARA 513 post.

4 See *ibid* r 78(1); and PARA 513 post. See also PARA 572 post.

5 Prison Act 1952 s 6(3) (as amended: see note 2 *supra*). See also the Prison Rules 1999, SI 1999/728, r 77(3); and PARA 513 post.

6 See the Prison Act 1952 s 6(3) (as amended: see note 2 *supra*); and the Prison Rules 1999, SI 1999/728, r 79(2).

7 *Ibid* r 79(2).

8 *Ibid* r 79(3).

9 See *ibid* r 80.

UPDATE

511 [Independent monitoring boards]

TEXT AND NOTES--The boards appointed under the Prison Act 1952 s 6 (boards of visitors) are renamed as independent monitoring boards: Offender Management Act 2007 s 26(1). Accordingly, 1952 Act s 6(2), (3) further amended, s 6(2A) added by 2007 Act s 26(2). SI 1999/728 r 79(1) amended by SI 2007/2954. SI 1999/728 r 80 amended: SI 2008/597.

NOTE 2--1971 Act Sch 7 para 4 repealed: Statute Law (Repeals) Act 2004.

TEXT AND NOTE 8--SI 1999/728 r 79(3) substituted: SI 2007/2954.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(2) PRISON AUTHORITIES/(ii) Boards of Visitors/512. Membership, termination of membership and meetings.

512. Membership, termination of membership and meetings.

At least two members of a Board of Visitors must be magistrates¹. A person interested in any contract for the supply of goods and services to a prison is disqualified from membership², but the board's proceedings are not invalidated by any vacancy in the membership or any defect in a member's appointment³. Members hold office for three years unless the Secretary of State appoints a shorter period⁴. A member appointed for the first time to a Board of Visitors or reappointed to the board following a gap of a year or more in his membership of it must, during the period of 12 months following the date on which he is so appointed or (as the case may be) reappointed, undertake such training as may reasonably be required by the Secretary of State⁵. The Secretary of State may terminate the appointment of a member if he is satisfied that (1) the member has failed satisfactorily to perform his duties; (2) he has failed to undertake training he has been required to undertake; (3) he is by reason of physical or mental illness, or for any other reason, incapable of carrying out his duties; (4) he has been convicted of such a criminal offence or his conduct has been such that it is not in the Secretary of State's opinion fitting that he should remain a member; or (5) there is, or appears to be or could appear to be, any conflict of interest between the member performing his duties as a member and any interest of that member, whether personal, financial or otherwise⁶. Where the Secretary of State (a) has reason to suspect that a member of the Board of Visitors for a prison may have so conducted himself that his appointment may be liable to be terminated under head (1) or head (4) above; and (b) is of the opinion that the suspected conduct is of such a serious nature that the member cannot be permitted to continue to perform his functions as a member of the board pending the completion of the Secretary of State's investigations into the matter and any decision as to whether the member's appointment should be terminated, he may suspend the member from office for such period or periods as he may reasonably require to complete his investigations and determine whether or not the appointment of the member should be so terminated⁷.

A board must have a chairman and a vice chairman, who must be members of the board⁸. When a board is first constituted, the Secretary of State must appoint a chairman and a vice chairman to hold office for a period not exceeding 12 months⁹. Thereafter, having first consulted the board, and before the date of the first meeting of the board in any year of office of the board, the Secretary of State must appoint a chairman and vice chairman for that year¹⁰. The Secretary of State, after first having consulted the board, must promptly fill any casual vacancy arising in the office of chairman or vice chairman¹¹. The Secretary of State may terminate the appointment of a member as chairman or vice chairman of the board if he is satisfied that the member has (i) failed satisfactorily to perform his functions as chairman or (as the case may be) vice chairman; or (ii) has grossly misconducted himself while performing those functions¹².

The board must generally meet at the prison once a month¹³. However, it may resolve for reasons specified in the resolution that less frequent meetings are sufficient, but a minimum of eight meetings a year must be held¹⁴. The board may fix a quorum of not fewer than three members for proceedings¹⁵. Minutes of the board's proceedings must be kept¹⁶.

1 See the Prison Act 1952 s 6(2). The size of the board is a matter for the Secretary of State, who will take into account such factors as the size of the prison and the fluidity of the inmate population (which may call for more frequent visits).

- 2 See the Prison Rules 1999, SI 1999/728, r 74.
- 3 Ibid r 76(4).
- 4 See ibid r 75(1). As to the Secretary of State see PARA 505 ante.
- 5 Ibid r 75(2).
- 6 Ibid r 75(3).
- 7 See ibid r 75(4).
- 8 Ibid r 75(5).
- 9 See ibid r 75(6)(a).
- 10 See ibid r 75(6)(b).
- 11 See ibid r 75(6)(c).
- 12 Ibid r 75(7).
- 13 Ibid r 76(1).
- 14 See ibid r 76(1).
- 15 Ibid r 76(2).
- 16 Ibid r 76(3).

UPDATE

512 Membership, termination of membership and meetings

TEXT AND NOTES--The boards appointed under the Prison Act 1952 s 6 (boards of visitors) are renamed as independent monitoring boards: Offender Management Act 2007 s 26(1). SI 1999/728 rr 74, 75(2), (4), 76(1) amended to refer to independent monitoring boards: SI 2008/597.

TEXT AND NOTE 1--1952 Act s 6(2) amended so as to remove requirement that at least two members of the board must be magistrates: 2007 Act s 26(3), Sch 5 Pt 2.

TEXT AND NOTE 2--Now refers to the supply of goods or services: SI 1999/728 r 74 (amended by SI 2000/1794).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(2) PRISON AUTHORITIES/(ii) Boards of Visitors/513. Duties.

513. Duties.

A Board of Visitors must satisfy itself as to the state of the prison premises, the administration of the prison and the treatment of the prisoners¹. The members must visit the prison frequently and the board must arrange a rota so that at least one member visits the prison between board meetings². The board must inquire into and report on any matter at the request of the Secretary of State³. It must direct the governor's attention to any matter calling for his attention and report to the Secretary of State any matter which it considers it expedient to report⁴. The board must inform the Secretary of State immediately of any abuse which comes to its knowledge⁵. Before exercising any power under the Prison Rules 1999, the board must consult the governor in relation to any matter which may affect discipline⁶.

The board has particular duties (1) to hear any complaint or request which a prisoner wishes to make⁷; (2) to arrange for the food of the prisoners to be inspected by a member of the board at frequent intervals⁸; and (3) to inquire into any report made to it, whether or not by a member of the board, that a prisoner's health, mental or physical, is likely to be injuriously affected by any conditions of his imprisonment⁹.

The board also has responsibilities in relation to letters and visits¹⁰, removal from association¹¹ and restraints¹².

1 Prison Rules 1999, SI 1999/728, r 77(1).

2 Ibid r 79(1).

3 Ibid r 77(2). As to the Secretary of State see PARA 505 ante. It is no longer the practice for boards to be asked to undertake investigations into disturbances or malpractices in the prison. The more usual course is to appoint a senior Prison Service official or the Chief Inspector of Prisons: see PARA 508 ante.

4 Ibid r 77(3).

5 Ibid r 77(4).

6 Ibid r 77(5).

7 See ibid r 78(1); and PARA 572 post.

8 Ibid r 78(2). As to food see PARA 574 post.

9 Ibid r 78(3). As to medical care and health see PARAS 580-583 post.

10 See PARAS 570-571 post.

11 See PARA 592 post.

12 See PARA 595 post.

UPDATE

513 Duties

TEXT AND NOTES--The boards appointed under the Prison Act 1952 s 6 (boards of visitors) are renamed as independent monitoring boards: Offender Management Act 2007 s 26(1). Accordingly, SI 1999/728 r 79(1) amended: SI 2007/2954.

NOTE 1--SI 1999/728 r 77(1) amended: SI 2008/597.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(2) PRISON AUTHORITIES/(iii) Magistrates/514. Jurisdiction of magistrates.

(iii) Magistrates

514. Jurisdiction of magistrates.

A magistrate may at any time visit any prison in the area for which he is on the commission of the peace or where a prisoner is confined in respect of an offence committed in that area, may examine the condition of the prison and of the prisoners and may enter in the visitors' book, which the governor must keep, any observations on the condition of the prison or any abuses¹. Any such entry must be brought to the attention of the Board of Visitors on its next visit². This power does not authorise a magistrate to discuss with a prisoner anything except his treatment in the prison or to visit a prisoner under sentence of death³.

1 See the Prison Act 1952 s 19(1) (amended by the Local Government Act 1972 s 272(1), Sch 30). In relation to a contracted-out prison the reference to the governor is construed as a reference to the director: Criminal Justice Act 1991 s 87(1), (4). As to contracted-out prisons see PARA 532 et seq post.

2 Prison Act 1952 s 19(3).

3 Ibid s 19(2). The death penalty has now been abolished: see PARA 635 post. It seems that access to a prisoner may, in certain circumstances, be prevented: *R v Eaststaff* (1818) Gow 138.

UPDATE

514 Jurisdiction of magistrates

NOTE 1--1952 Act s 19(1) further amended: Access to Justice Act 1999 Sch 10 para 21; Courts Act 2003 Sch 8 para 94, Sch 10.

TEXT AND NOTE 2--1952 Act s 19(3) amended: Offender Management Act 2007 Sch 3 para 6.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(3) THE PRISON SERVICE/515. Statutory officers of prisons.

(3) THE PRISON SERVICE

515. Statutory officers of prisons.

Every prison must have a governor, a chaplain and a medical officer and such other officers as may be necessary¹. Every prison which holds women prisoners must have a sufficient number of women officers². 'Prison officer' is not defined in the Prison Act 1952, but presumably covers all those previously mentioned. In the Prison Rules 1999³, 'officer' is defined as 'an officer of a prison'⁴, and again seems apt to cover all those previously mentioned who are working in a prison, and is not confined to uniformed prison officers. The basic distinction within the legislative scheme is between officers of a prison, who are members of the Prison Service, and officers of the Secretary of State⁵, who are not officers of a prison⁶. Administratively, the Prison Service is divided into governor grades and prison officer grades, the higher of which are chief officer, principal officer and senior officer.

1 Prison Act 1952 s 7(1). It remains lawful to discriminate between male and female prison officers as to requirements relating to height: see the Sex Discrimination Act 1975 s 18(1). As to the power to appoint officers see the Prison Act 1952 s 3(1) (as amended); and PARA 505 ante. As to governors see PARA 522 post. As to the chaplain see PARA 584 post; and as to the medical officer see PARA 580 post. In relation to a contracted-out prison, the reference to a governor is construed as a reference to a director and a controller: Criminal Justice Act 1991 s 87(1), (2). As to contracted-out prisons see PARA 532 et seq post. As to prisoner escorting services see PARAS 524-528 post.

2 Prison Act 1952 s 7(2).

3 I.e. the Prison Rules 1999, SI 1999/728.

4 See *ibid* r 2(1). For the purposes of r 40(2) (see PARA 538 post), 'officer' also includes a prisoner custody officer who is authorised to perform escort functions in accordance with the Criminal Justice Act 1991 s 89 (as amended) (see PARA 524 post): see the Prison Rules 1999, SI 1999/728, r 2(1). Where the Secretary of State has entered into a contract for the running of a prison under the Criminal Justice Act 1991 s 84 (as substituted) (see PARA 532 post), references to an officer in the Prison Rules 1999, SI 1999/728, include references to a prisoner custody officer certified as such under the Criminal Justice Act 1991 s 89(1) (see PARA 524 post) and performing custodial duties: Prison Rules 1999, SI 1999/728, r 82(1)(a).

Where the Secretary of State has entered into a contract under the Criminal Justice Act 1991 s 88A(1) (as added) (see PARA 529 post) for any functions at a directly managed prison to be performed by prisoner custody officers who are authorised to perform custodial duties under s 89(1) (see PARA 524 post), references to an officer in the Prison Rules 1999, SI 1999/728 (except references to an officer in r 68) include references to a prisoner custody officer who is so authorised and who is performing contracted-out functions for the purposes of, or for purposes connected with, the prison: r 84(1), (2). For the meaning of 'directly managed prison' see PARA 529 note 14 post; definition applied by r 84(3).

5 As to the Secretary of State see PARA 505 ante.

6 See eg the Prison Rules 1999, SI 1999/728, r 49(4); and PARA 595 post. See also the Prison Act 1952 s 4(2) (as amended); and PARA 508 ante.

UPDATE

515 Statutory officers of prisons

TEXT AND NOTE 1--It is no longer a requirement for there to be a medical officer appointed under the Prison Act 1952 s 7(1) for each prison (and, accordingly, in s 7(1)

the words 'and a medical officer' are omitted): Offender Management Act 2007 s 25(1), Sch 5 Pt 2.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(3) THE PRISON SERVICE/516. Powers and duties of prison officers.

516. Powers and duties of prison officers.

Prison officers¹ acting as such have all the powers, authority, protection and privileges of a constable². An assault on a prison officer therefore constitutes an assault on a constable in the execution of his duty³. It is the duty of every officer to conform to the Prison Rules 1999⁴ and the rules and regulations of the prison, to assist and support the governor in their maintenance and to obey his lawful instructions⁵. An officer must promptly inform the governor of any abuse or impropriety which comes to his knowledge⁶.

In the control of prisoners, officers must seek to influence them through their own example and leadership, and to enlist their willing co-operation⁷. In dealing with a prisoner, an officer must not use force unnecessarily; when force is necessary, only the amount that is necessary may be used⁸. Officers must not act deliberately in a manner calculated to provoke a prisoner⁹.

The prison officer class is divided into general prison officers, known as discipline officers, and those specialising as instructors, hospital officers, catering officers, physical education instructors, dog handlers and trade and works officers¹⁰.

1 References in the Prison Rules 1999, SI 1999/728, Pt II (rr 3-61) to prison officers (other than governors) apply to constables or members of the armed forces when employed in an emergency to assist the governor of a prison in performing duties ordinarily performed by prison officers: see r 69.

2 Prison Act 1952 s 8. See also POLICE vol 36(1) (2007 Reissue) PARA 135. This does not apply to a prisoner custody officer performing custodial duties at a prison: Criminal Justice Act 1991 s 87(1), (3) (substituted by the Criminal Justice and Public Order Act 1994 s 97(3)).

In *Secretary of State for the Home Department v Barnes* (1994) Times, 19 December, prison officers sought to rely on the Prison Act 1952 s 8 as authority for the proposition that it was an implied term of their contract with the Home Office that they were not obliged to carry out instructions which impinged on the exercise of their powers as constables to prevent a breach of the peace, or in the alternative, that it was a contractual term that any obligation to obey instructions was subject to s 8. The purpose of the claim was in effect to prevent the Home Secretary from moving any additional prisoners to the already overcrowded Preston prison on the basis that any extra prisoners might give rise to rioting or other forms of disorder. The High Court held that the power of a constable given to a prison officer was designed to enable him to perform his duties as a prison officer as set out in the prison rules. Prominent amongst those duties was a duty to obey the governor's lawful instructions and consequently any conflict between a prison officer's exercise of discretion in the use of his powers as a constable had always to be exercised in the context of his duty to obey lawful instruction. Any apparent conflict between the two duties must be resolved in favour of the duty to obey the governor's lawful orders.

The employment status of prison officers is now governed by the Criminal Justice and Public Order Act 1994 ss 126-128 (s 126 as amended) (see PARAS 518-520 post). As to the position before that Act see *Home Office v Robinson* [1982] ICR 31, [1981] IRLR 524, EAT; *Boddington v Lawton* [1994] ICR 478.

As to powers of search by authorised employees at a prison see the Prison Act 1952 s 8A (as added by the Criminal Justice and Public Order Act 1994 s 152(1)).

3 See the Police Act 1996 s 89(1); *Pointing v Wilson* [1927] 1 KB 382, DC; and POLICE vol 36(1) (2007 Reissue) PARA 481. The same is presumably true of an obstruction of a prison officer, which in the case of a police officer is punishable under the Police Act 1996 s 89(2): see POLICE vol 36(1) (2007 Reissue) PARA 481.

The Prison Rules 1999, SI 1999/728, r 51(6), (19) create various disciplinary offences by prisoners in relation to prison officers: see PARA 597 post.

4 Ie the Prison Rules 1999, SI 1999/728.

5 Ibid r 62(1).

6 Ibid r 62(2).

- 7 Ibid r 6(2).
- 8 See ibid r 47(1); and PARA 589 post.
- 9 Ibid r 47(2).
- 10 Prison Service Staff Manual (2nd Edn, June 1999).

UPDATE

516 Powers and duties of prison officers

NOTE 2--Individuals holding an office, rank or position in Her Majesty's Prison Service may apply for authorisation to carry out intrusive surveillance: see the Regulation of Investigatory Powers (Designation of Public Authorities for the Purposes of Intrusive Surveillance) Order 2001, SI 2001/1126, art 3 (amended by SI 2007/2128).

1991 Act s 87(3) substituted: Offender Management Act 2007 s 20(2). See also 1991 Act s 87(4) (amended by 2007 Act s 20(3)).

1952 Act s 8A amended: 2007 Act s 27.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(3) THE PRISON SERVICE/517. Discipline of prison officers.

517. Discipline of prison officers.

A prison officer may not receive any unauthorised fee, gratuity or other consideration in connection with his office¹. He may not take part in any business or pecuniary transaction with or on behalf of a prisoner without the leave of the Secretary of State². Nor may he without authority bring into or take out of the prison, or attempt to bring in or take out, for any prisoner any article whatsoever, or knowingly allow any article to be brought in or taken out, or deposit any article with intent that it should come into a prisoner's possession³. It is a summary offence, punishable by a maximum of six months' imprisonment or a fine not exceeding level 3 on the standard scale or both, for an officer to allow any alcoholic liquor or any tobacco to be sold or used in a prison contrary to the regulations of the prison⁴. An officer must submit himself to be searched in the prison if the governor so directs⁵. No officer may, without the knowledge of the governor, communicate with any person whom he knows to be a former prisoner or a relative or friend of a prisoner or former prisoner⁶.

No officer may make, directly or indirectly, any unauthorised communication to a representative of the press or any other person concerning matters which have become known to him in the course of his duty⁷; and no officer may, without authority, publish any matter or make any public pronouncement relating to the administration of any Prison Service establishment⁸ or to any inmate⁹.

The Secretary of State may approve a code of discipline to have effect in relation to officers, or such classes of officers as it may specify, setting out the offences against discipline and the awards which may be made in respect of them and the procedure for dealing with charges¹⁰.

1 Prison Rules 1999, SI 1999/728, r 63.

2 Ibid r 65(1). As to the Secretary of State see PARA 505 ante.

3 See ibid r 65(2).

4 See the Prison Act 1952 s 40 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37(2) (as substituted): Interpretation Act 1978 s 5, Sch 1 (amended by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58(a)). See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 1991 s 18 (substituted by the Criminal Justice Act 1993 s 65); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

5 See the Prison Rules 1999, SI 1999/728, r 64. Any such search must be conducted in as seemly a manner as is consistent with discovering anything concealed: see r 64.

6 Ibid r 66.

7 Ibid r 67(1). The Official Secrets Acts 1911, 1920, 1939, 1989 also apply: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 483 et seq.

8 Ie any institution to which the Prison Act 1952 applies: see the Prison Rules 1999, SI 1999/728, r 67(2).

9 Ibid r 67(2).

10 Ibid r 68. Where the prison is a contracted-out prison, this provision does not apply in relation to a prisoner custody officer certified as such under the Criminal Justice Act 1991 s 89(1) (see PARA 524 post) and

performing custodial duties: see the Prison Rules 1999, SI 1999/728, r 82(1)(c). As to contracted-out prisons see PARA 532 et seq post.

A power to suspend a prison officer without pay under the Home Office Staff Handbook may not be used to supplement the code of discipline in a case where the code confers no power to suspend: *R v Secretary of State for the Home Department, ex p Attard* [1990] COD 261, Times, 29 June, CA. A prison officer is entitled to judicial review of the Secretary of State's decision to dismiss him under the code of discipline: *R v Secretary of State for the Home Department, ex p Benwell* [1985] QB 554, [1984] 3 All ER 854.

UPDATE

517 Discipline of prison officers

NOTE 4--1952 Act s 40 now ss 40A-40C: see further PARA 604.

1991 Act s 18, consolidated in the Powers of Criminal Courts (Sentencing) Act 2000 s 128, repealed: Criminal Justice Act 2003 Sch 37 Pt 7. See now s 162.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(3) THE PRISON SERVICE/518. Trade unions.

518. Trade unions.

Certain employment legislation relating to trade unions¹ has effect as if an individual who as a member of the prison service² acts in a capacity in which he has the powers or privileges of a constable were not, by virtue of his so having those powers or privileges, to be regarded as in police service for the purposes of any provision of that legislation³. Where:

- 1 (1) the certificate of independence of any organisation has been cancelled, at any time before the passing of the Criminal Justice and Public Order Act 1994⁴, in consequence of the removal of the name of that organisation from a list of trade unions kept under provisions of the relevant employment legislation⁵; but
- 2 (2) it appears to the certification officer that the organisation would have remained on the list, and that the certificate would have remained in force, had that legislation had effect at and after that time⁶,

then (a) the certification officer must restore the name to the list and delete from his records any entry relating to the cancellation of the certificate⁷; (b) the removal of the name from the list, the making of the deleted entry and the cancellation of the certificate is deemed never to have occurred⁸; and (c) the organisation is accordingly deemed, for the purposes for which it is treated⁹ as having been a trade union, to have been independent throughout the period between the cancellation of the certificate and the deletion of the entry relating to that cancellation¹⁰.

1 *I.e.* the Trade Union and Labour Relations (Consolidation) Act 1992 (see EMPLOYMENT); and the Employment Rights Act 1996 (see EMPLOYMENT): Criminal Justice and Public Order Act 1994 s 126(2)(a) (substituted by the Employment Rights Act 1996 s 240, Sch 1 para 65). In relation to Northern Ireland, the relevant legislation is the Trade Union and Labour Relations (Northern Ireland) Order 1995, SI 1995/1980 (NI 12); and the Employment Rights (Northern Ireland) Order 1996, SI 1996/1919 (NI 16): Criminal Justice and Public Order Act 1994 s 126(2) (b) (substituted by the Employment Rights (Northern Ireland) Order 1996, SI 1996/1919 (NI 16), art 255, Sch 1).

2 For the purposes of the Criminal Justice and Public Order Act 1994 s 126 (as amended), a person is a member of the prison service if he is an individual holding a post to which he has been appointed for the purposes of the Prison Act 1952 s 7 (as amended) (see PARAS 515 ante, 522, 580, 584 post) or under the Prison Act (Northern Ireland) 1953 s 2(2) (appointment of prison staff): Criminal Justice and Public Order Act 1994 s 126(3).

3 *Ibid* s 126(1). Except for the purpose of validating anything that would have been a contravention of s 127(1) (see PARA 519 post) if it had been in force, s 126(1), so far as it relates to the question whether an organisation consisting wholly or mainly of members of the prison service is a trade union, is deemed always to have had effect and to have applied, in relation to times when provisions of the relevant employment legislation were not in force, to the corresponding legislation then in force: s 126(4). See also EMPLOYMENT vol 40 (2009) PARA 846 et seq.

4 The Criminal Justice and Public Order Act 1994 received the royal assent on 3 November 1994.

5 *Ibid* s 126(5)(a).

6 *Ibid* s 126(5)(b).

7 *Ibid* s 126(6)(a).

8 *Ibid* s 126(6)(b).

9 *I.e.* by virtue of *ibid* s 126(4) (see note 3 *supra*): see s 126(6)(c).

10 Ibid s 126(6)(c).

UPDATE

518 Trade unions

NOTE 1--SI 1996/1919 (NI 16) amended: Tax Credits Act 2002 Sch 6, SI 2006/246, SI 2008/948, SI 2009/2054.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(3) THE PRISON SERVICE/519. Inducements to withhold services or to indiscipline.

519. Inducements to withhold services or to indiscipline.

There is a duty owed to the Secretary of State¹ not to induce a prison officer²:

- 3 (1) to withhold his services as such an officer³; or
- 4 (2) to commit a breach of discipline⁴.

Without prejudice to the right of the Secretary of State to bring civil proceedings in respect of an apprehended contravention of these provisions, any breach of this duty which causes the Secretary of State to sustain loss or damage is actionable, at his suit or instance, against the person in breach⁵.

1 See the Criminal Justice and Public Order Act 1994 s 127(2). As to the Secretary of State see PARA 505 ante.

2 'Prison officer' means any individual who (1) holds any post, otherwise than as a chaplain or assistant chaplain or as a medical officer, to which he has been appointed for the purposes of the Prison Act 1952 s 7 (as amended) (see PARAS 515 ante, 522, 580, 584 post) or under the Prison Act (Northern Ireland) 1953 s 2(2); (2) holds any post, otherwise than as a medical officer, to which he has been appointed under the Prisons (Scotland) Act 1989 s 3(1); or (3) is a custody officer within the meaning of the Criminal Justice and Public Order Act 1994 Pt I (ss 1-24) or a prisoner custody officer within the meaning of the Criminal Justice Act 1991 Pt IV (ss 73-92) (as amended) (see PARA 524 post) or the Criminal Justice and Public Order Act 1994 Pt VIII Ch II (ss 102-117) (as amended) or Ch III (ss 118-125): s 127(4).

3 See *ibid* s 127(1)(a).

4 See *ibid* s 127(1)(b). The reference to a breach of discipline by a prison officer is a reference to a failure by a prison officer to perform any duty imposed on him by the prison rules or any code of discipline having effect under those rules or any other contravention by a prison officer of those rules or any such code: s 127(5). 'The prison rules' means any rules for the time being in force under the Prison Act 1952 s 47 (as amended) (see PARAS 501-502 ante), the Prisons (Scotland) Act 1989 s 39 or the Prison Act (Northern Ireland) 1953 s 13: Criminal Justice and Public Order Act 1994 s 127(6).

5 *Ibid* s 127(3). The provisions of s 127 must be disregarded in determining for the purposes of any of the relevant employment legislation whether any trade union is an independent trade union: s 127(7). Nothing in the relevant employment legislation affects the rights of the Secretary of State by virtue of s 127: s 127(8). As to the relevant employment legislation see PARA 518 note 1 ante (definition applied by s 127(9)).

UPDATE

519 Inducements to withhold services or to indiscipline

TEXT AND NOTES--Criminal Justice and Public Order Act 1994 s 127 further amended so as to reintroduce a statutory prohibition on inducing prison officers to take industrial action or commit a breach of discipline: Criminal Justice and Immigration Act 2008 s 138. See further Criminal Justice and Public Order Act 1994 s 127A (added by Criminal Justice and Immigration Act 2008 s 139) (power to suspend the operation of Criminal Justice and Public Order Act 1994 s 127).

NOTE 2--In head (1) reference to Prison Act 1952 s 7 omitted; and head (2) omitted: Criminal Justice and Public Order Act 1994 s 127(4) (amended by the Regulatory Reform (Prison Officers) (Industrial Action) Order 2005, SI 2005/908).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(3) THE PRISON SERVICE/520. Pay and related conditions.

520. Pay and related conditions.

The Secretary of State¹ may by regulations² provide for the establishment, maintenance and operation of procedures for the determination from time to time of:

- 5 (1) the rates of pay and allowances to be applied to the prison service³; and
- 6 (2) such other terms and conditions of employment in that service as may appear to him to fall to be determined in association with the determination of rates of pay and allowances⁴.

Before making any such regulations the Secretary of State must consult with such organisations appearing to him to be representative of persons working in the prison service and with such other persons as he thinks fit⁵. Regulations may:

- 7 (a) provide for determinations with respect to matters to which the regulations relate to be made wholly or partly by reference to such factors, and the opinion or recommendations of such persons, as may be specified or described in the regulations⁶;
- 8 (b) authorise the matters considered and determined in pursuance of the regulations to include matters applicable to times and periods before they are considered or determined⁷;
- 9 (c) make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit⁸; and
- 10 (d) make different provision for different cases⁹.

1 As to the Secretary of State see PARA 505 ante.

2 The power so to make regulations is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Criminal Justice and Public Order Act 1994 s 128(3). At the date at which this volume states the law no such regulations had been made.

3 Ibid s 128(1)(a). For the purposes of s 128, the prison service comprises all the individuals who are prison officers within the meaning of s 127 (see PARA 519 note 2 ante), apart from those who are custody officers within the meaning of Pt I (ss 1-24) or prisoner custody officers within the meaning of the Criminal Justice Act 1991 Pt IV (ss 73-92) (as amended) (see MAGISTRATES) or the Criminal Justice and Public Order Act 1994 Pt VIII Ch II (ss 102-117) (as amended) or Ch III (ss 118-125): s 128(5).

4 Ibid s 128(1)(b).

5 Ibid s 128(2).

6 Ibid s 128(4)(a).

7 Ibid s 128(4)(b).

8 Ibid s 128(4)(c).

9 Ibid s 128(4)(d).

UPDATE

520 Pay and related conditions

NOTE 3--For the purposes of the Criminal Justice and Public Order Act 1994 s 128 the prison service now comprises all the individuals who hold any post, other than as chaplain or assistant chaplain, to which they have been appointed for the purposes of the Prison Act 1952 s 7: 1994 Act s 128(5) (substituted by the Regulatory Reform (Prison Officers) (Industrial Action) Order 2005, SI 2005/908; further amended by Offender Management Act 2007 s 25(2)).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(3) THE PRISON SERVICE/521. Accommodation of prison officers.

521. Accommodation of prison officers.

Where any living accommodation is provided for a prison officer or his family by virtue of his office, then, if he ceases to be a prison officer, is suspended or dies, the officer, or (as the case may be) his family, must quit any such accommodation when required to do so by the Secretary of State¹. If the officer or his family refuses or neglects to quit within 48 hours of being required to do so, two magistrates may issue a warrant directing any constable to enter the accommodation, by force if necessary, and deliver possession of it to a person acting for the Secretary of State².

1 See the Prison Act 1952 s 11(1) (s 11 amended by the Prison Commissioners Dissolution Order 1963, SI 1963/597, art 3(2), Sch 1). As to the Secretary of State see PARA 505 ante.

2 See the Prison Act 1952 s 11(2) (as amended: see note 1 supra).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(3) THE PRISON SERVICE/522. Governors.

522. Governors.

Every prison must have a governor¹, and if large enough it may also have a deputy governor². There is no longer any requirement that the governor of a women's prison must be a woman³. Every prisoner is deemed to be in the legal custody of the governor⁴, even when he is being taken to or from the prison and when outside the prison under the control of a prison officer⁵. With the permission of the Secretary of State, a governor may delegate any of his powers and duties under the Prison Rules 1999⁶ to another officer of the prison⁷, and references in the rules to the governor include an officer for the time being in charge of a prison⁸.

1 See the Prison Act 1952 s 7(1); and PARA 515 ante. In relation to a contracted-out prison, the reference to a governor is construed as a reference to a director and a controller: see the Criminal Justice Act 1991 s 87(1), (2); and PARA 515 ante. As to contracted-out prisons see PARA 532 et seq post.

Various miscellaneous functions and duties of governors, other than those referred to in this title, are to be found in the Magistrates' Courts Rules 1981, SI 1981/552 (as amended): see eg rr 9, 10, 23, 55 (as amended), 63 (as amended), 86 (as amended), 87 (as amended), 88; and MAGISTRATES; SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 155.

As to the appointment of officers see PARA 505 ante.

2 See the Prison Act 1952 s 7(3).

3 See the Sex Discrimination Act 1975 s 18(2), which repeals that requirement in the Prison Act 1952 s 7(2).

4 See *ibid* s 13(1); and PARA 538 post.

5 See *ibid* s 13(2); and PARA 538 post. This includes the time the prisoner is in court undergoing trial, whether he had previously been remanded in custody or on bail: see *Mee v Cruikshank* (1902) 86 LT 708; and PARA 539 post.

6 *Ie* the Prison Rules 1999, SI 1999/728.

7 *Ibid* r 81. In relation to a contracted-out prison, references to a governor in the Prison Rules 1999, SI 1999/728, generally include references to a director approved by the Secretary of State for the purposes of the Criminal Justice Act 1991 s 85(1)(a) (see PARA 533 post): see the Prison Rules 1999, SI 1999/728, r 82(1)(b). However, in rr 45, 48, 49, 53, 54, 55, 61, 81, references to a governor include references to a controller (ie appointed by the Secretary of State under the Criminal Justice Act 1991 s 85(1)(b): see PARA 533 post) (see the Prison Rules 1999, SI 1999/728, r 82(1)(b)(i)); and in rr 62(1), 66, 77, references to a governor include references to the director and controller (see r 82(1)(b)(ii)).

8 *Ibid* r 2(1).

UPDATE

522 Governors

NOTE 7--SI 1999/728 r 82(1)(b)(i) amended: SI 2007/2954. SI 1999/728 r 82(1)(b)(iii), (1A) added: SI 2007/2954.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(3) THE PRISON SERVICE/523. Liability of governor.

523. Liability of governor.

A governor is liable to an action for false imprisonment if he fails to discharge a prisoner on the due date¹; or if he detains the wrong person, even if he has no means of ascertaining the identity of the person named in the warrant²; or if he receives into prison a person whose sentence has been varied on appeal without a fresh warrant of commitment having been made out by the court³. However, a governor is protected from liability if he has obeyed a warrant of commitment to prison which is valid on its face⁴, even if obedience to the warrant results in a prisoner being detained beyond the fixed statutory period⁵. In accordance with principle, governors are not vicariously liable for the criminal acts of their subordinates⁶.

1 *Moone v Rose* (1869) LR 4 QB 486. He is liable for a failure by prison officers to release a prisoner on his acquittal at his trial, even if the officers acted without his knowledge or authority: *Mee v Cruikshank* (1902) 86 LT 708; *R v Governor of Brockhill Prison (No 2)*, *ex p Evans* [1998] 4 All ER 993, [1999] 2 WLR 103, CA. See also PARA 539 post.

2 *Aaron v Alexander* (1811) 3 Camp 35.

3 *Demer v Cook* (1903) 88 LT 629.

4 *Olliet v Bessey* (1679) T Jo 214; *Henderson v Preston* (1888) 21 QBD 362, CA; *Thomas v Hudson* (1845) 14 M & W 353 (affd (1847) 16 M & W 885, Ex Ch); *Greaves v Keene* (1879) 4 Ex D 73.

5 *Olotu v Home Office* [1997] 1 All ER 385, [1997] 1 WLR 328, CA. As to the fixed statutory period see the Prosecution of Offences (Custody Time Limits) Regulations 1987, SI 1987/299 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1152-1156.

6 *R v Huggins* (1730) 2 Stra 883. As to their civil liability see *Yorke v Chapman* (1840) 11 Ad & El 813.

UPDATE

523 Liability of governor

NOTE 1--*R v Governor of Brockhill Prison*, cited, affirmed: [2001] 2 AC 19, [2000] 4 All ER 15, HL.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(4) PRISONER ESCORTS/524. Prisoner escort arrangements.

(4) PRISONER ESCORTS

524. Prisoner escort arrangements.

The Secretary of State¹ may make arrangements for²: (1) the delivery of prisoners³ from one set of relevant premises⁴ to another⁵; (2) the custody of prisoners held on the premises of any court (whether or not they would otherwise be in the custody of the court) and their production before the court⁶; (3) the custody of prisoners temporarily held in a prison⁷ in the course of delivery from one prison to another⁸; and (4) the custody of prisoners while they are outside a prison for temporary purposes⁹, to be performed in such cases as may be determined by or under the arrangements by prisoner custody officers¹⁰ who are authorised to perform such functions¹¹.

Arrangements made by the Secretary of State in respect of the above functions are referred to as 'prisoner escort arrangements' and may include contracting with others for the provision by them of prisoner custody officers¹².

Any person who, under a warrant¹³ or a hospital order¹⁴ or remand¹⁵, is responsible for the performance of such a function is deemed to have complied with the warrant, order or remand if he does all that he reasonably can to secure performance by a prisoner custody officer acting in pursuance of prisoner escort arrangements¹⁶.

A person who is or has been employed (whether as a prisoner custody officer or otherwise) in pursuance of prisoner escort arrangements, or at a contracted-out prison¹⁷ is guilty of an offence if he discloses, otherwise than in the course of his duty or as authorised by the Secretary of State, any information which he acquired in the course of his employment and which relates to a particular prisoner¹⁸. A person guilty of such an offence is liable on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, and on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum¹⁹ or both²⁰.

1 As to the Secretary of State see PARA 505 ante.

2 Criminal Justice Act 1991 s 80(1).

3 'Prisoner' means any person for the time being detained in legal custody as a result of a requirement imposed by a court or otherwise that he be so detained: *ibid* s 92(1) (definition substituted by the Criminal Justice and Public Order Act 1994 s 93(5)).

4 'Relevant premises' means a court, prison, police station or hospital; and either (but not both) of the relevant sets of premises may be situated in a part of the British Islands outside England and Wales: Criminal Justice Act 1991 s 80(1A) (added by the Criminal Justice and Public Order Act 1994 s 93(2)). 'Prison' includes a young offender institution or remand centre: Criminal Justice Act 1991 s 92(1). For these purposes 'hospital' has the same meaning as in the Mental Health Act 1983 ss 34(2) (as amended) (see MENTAL HEALTH vol 30(2) (Reissue) PARA 417): Criminal Justice Act 1991 s 80(4) (added by the Criminal Justice and Public Order Act 1994 s 93(4)).

5 Criminal Justice Act 1991 s 80(1)(a) (substituted by the Criminal Justice and Public Order Act 1994 s 93(1)).

6 Criminal Justice Act 1991 s 80(1)(b) (amended by the Criminal Justice and Public Order Act 1994 s 93(1)).

7 See note 4 *supra*.

8 Criminal Justice Act 1991 s 80(1)(c) (substituted by the Criminal Justice and Public Order Act 1994 s 93(1)).

9 Criminal Justice Act 1991 s 80(1)(e).

10 'Prisoner custody officer' means a person in respect of whom a certificate is for the time being in force certifying: (1) that he has been approved by the Secretary of State for the purpose of performing escort functions or custodial duties or both; and (2) that he is accordingly authorised to perform them: *ibid* ss 89(1), 92(1). As to certification of officers see s 89 (as amended), Sch 10 (as amended); and PARA 528 post. 'Custodial duties' means custodial duties at a contracted-out or directly managed prison: s 89(3) (definition amended by the Criminal Justice and Public Order Act 1994 s 101(4)). For the meaning of 'directly managed prison' see PARA 529 note 14 post. See also note 17 *infra*. Prison custody officers are ineligible for jury service: see the Juries Act 1974 s 1 (as amended), Sch 1 Pt I Group B (as amended). As to the powers and duties of prisoner custody officers see PARA 526 post; as to their protection see PARA 528 post.

11 Criminal Justice Act 1991 s 80(1) (amended by the Criminal Justice and Public Order Act 1994 s 93(1)).

12 Criminal Justice Act 1991 ss 80(2), 92(1). See also the Prisoner Escort Rules 1993, SI 1993/515 (search of prisoners by prisoner custody officers); and PARA 526 post. As to provisions relating to prisoner escorts in Scotland and Northern Ireland see the Criminal Justice and Public Order Act 1994 ss 102-117 (as amended).

13 'Warrant' means a warrant of commitment, a warrant of arrest or a warrant under the Mental Health Act 1983 ss 47 (as amended), 48, 50 (as amended) or 74 (as amended) (see MENTAL HEALTH vol 30(2) (Reissue) PARAS 535-538, 571); Criminal Justice Act 1991 s 80(4) (as added: see note 4 *supra*).

14 'Hospital order' means an order for a person's admission to hospital made under the Mental Health Act 1983 s 37, 38 (as amended) or 44 (see MENTAL HEALTH vol 30(2) (Reissue) PARA 491 *et seq*), the Criminal Procedure (Insanity) Act 1964 s 5 (as substituted) (see MENTAL HEALTH vol 30(2) (Reissue) PARA 499) or the Criminal Appeal Act 1968 s 6, 14 or 14A (ss 6, 14 as substituted and s 14A as added) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1883); Criminal Justice Act 1991 s 80(4) (as added: see note 4 *supra*).

15 'Hospital remand' means a remand of a person to hospital under the Mental Health Act 1983 s 35 or 36; Criminal Justice Act 1991 s 80(4) (as added: see note 4 *supra*).

16 *Ibid* s 80(3) (amended by the Criminal Justice and Public Order Act 1994 s 93(3)).

17 As to contracted-out prisons see PARA 532 *et seq* post. Where the Secretary of State has entered into a contract for the running of part of a prison under the Criminal Justice Act 1991 s 84(1) (as substituted) (see PARA 532 post), that part and the remaining part are each to be treated for the purposes of the Prison Rules 1999, SI 1999/728, Pts II (rr 3-61), II (rr 62-69), IV (rr 70-73), VI (rr 81-85) as if they were separate prisons: r 83.

18 Criminal Justice Act 1991 s 91(1)(a) (amended by the Criminal Justice and Public Order Act 1994 s 101(6)).

19 The 'statutory maximum' is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended) and, as from 1 October 1992, is £5,000: s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)). The 'prescribed sum' means £5,000 or such sum as is for the time being substituted by order under the Magistrates' Courts Act 1980 s 143(1) (substituted by the Criminal Justice Act 1982 s 48(1)(a)): Magistrates' Courts Act 1980 s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)).

20 Criminal Justice Act 1991 s 91(2).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(4) PRISONER ESCORTS/525. Monitoring of prisoner escort arrangements and investigation of allegations.

525. Monitoring of prisoner escort arrangements and investigation of allegations.

Prisoner escort arrangements¹ must include the appointment of² a prisoner escort monitor³, and a panel of lay observers⁴.

1 For the meaning of 'prisoner' see PARA 524 note 3 ante. For the meaning of 'prisoner escort arrangements' see PARA 524 text to note 12 ante.

2 Criminal Justice Act 1991 s 81(1).

3 Ibid s 81(1)(a). He is a Crown servant with the duty of keeping the arrangements under review and reporting to the Secretary of State: s 81(1)(a). As to the Secretary of State see PARA 505 ante. It is also his duty to investigate and report on any allegations made against prisoner custody officers acting under arrangements and any alleged breaches of discipline on the part of prisoners: s 81(2). For the meaning of 'prisoner custody officer' see PARA 524 note 10 ante.

4 Ibid s 81(1)(b). Their duty is to inspect the conditions in which prisoners are transported or held and to make recommendations: s 81(1)(b). Their expenses may be defrayed by the Secretary of State to such extent as he may with the approval of the Treasury determine: s 81(3). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(4) PRISONER ESCORTS/526. Prisoner custody officers acting in pursuance of prisoner escort arrangements.

526. Prisoner custody officers acting in pursuance of prisoner escort arrangements.

A prisoner custody officer¹ acting in pursuance of prisoner escort arrangements² has the power³ to search⁴ any prisoner for whose delivery or custody he is responsible⁵, and to search any other person who is in or is seeking to enter any place where any such prisoner is or is to be held, and any article in his possession⁶. His duties, as respects prisoners for whose delivery or custody he is responsible⁷, are to prevent the prisoners' escape from lawful custody⁸, to prevent, or detect and report on, the commission or attempted commission by them of other unlawful acts⁹, to ensure good order and discipline on their part¹⁰, to attend to their wellbeing¹¹ and to give effect to any directions as to their treatment which are given by a court¹².

Where a prisoner custody officer acting in pursuance of prisoner escort arrangements is on any premises in which the Crown Court or a magistrates' court is sitting, it is his duty to give effect to any order of that court to search a person before it¹³. The officer's powers include power to use reasonable force where necessary¹⁴.

1 For the meaning of 'prisoner' see PARA 524 note 3 ante. For the meaning of 'prisoner custody officer' see PARA 524 note 10 ante.

2 For the meaning of 'prisoner escort arrangements' see PARA 524 text to note 12 ante.

3 Criminal Justice Act 1991 s 82(1).

4 In accordance with rules made by the Secretary of State: see *ibid* s 82(1)(a). At the date at which this volume states the law the Prisoner Escort Rules 1993, SI 1993/515, had been made. The power to make rules under the Criminal Justice Act 1991 s 82 (as amended) is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 82(6). As to the Secretary of State see PARA 505 ante.

The Prisoner Escort Rules 1993, SI 1993/515, state that: (1) an officer must only search a prisoner when it appears necessary to do so in the interests of security, good order or discipline (r 2); (2) a prisoner must be searched in as seemly a manner as is consistent with discovering anything concealed (r 3); (3) a prisoner must not be searched when he is exposed to public observation unless it appears to an officer that that is necessary (r 4); (4) a prisoner must not be stripped and searched in the sight of any person other than the officers who are present during the search (r 5); (5) a minimum of two officers must be present when a prisoner is being stripped and searched (r 6). 'Officer' means a prisoner custody officer who is authorised to perform escort functions in accordance with the Criminal Justice Act 1991 s 89 (as amended) (see PARA 524 ante); Prisoner Escort Rules 1993, SI 1993/515, r 1(a). 'Prisoner' means a person for whose delivery or custody an officer is responsible in pursuance of prisoner escort arrangements within the meaning of the Criminal Justice Act 1991 s 80(2) (see PARA 524 text to note 12 ante); Prisoner Escort Rules 1993, SI 1993/515, r 1(b).

5 Criminal Justice Act 1991 s 82(1)(a).

6 *Ibid* s 82(1)(b). This does not authorise a prison custody officer to require a person to remove any of his clothing other than an outer coat, jacket or gloves: s 82(2).

7 *Ibid* s 82(3). As to powers and duties of prisoner custody officers employed at contracted-out prisons see PARA 534 post.

8 *Ibid* s 82(3)(a).

9 *Ibid* s 82(3)(b).

10 *Ibid* s 82(3)(c).

11 Ibid s 82(3)(d). The Secretary of State may make rules with respect to the performance by prisoner custody officers of their duty to attend to the prisoners' wellbeing: s 82(3), (6).

12 Ibid s 82(3)(e).

13 Ibid s 82(4) (added by the Criminal Justice and Public Order Act 1994 s 94(2)). In the case of the Crown Court, the order to search the prisoner is under the Powers of Criminal Courts Act 1973 s 34A (as added) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 159) (Criminal Justice Act 1991 s 80(4)(a) (as so added)); in the case of a magistrates' court, the order is under the Magistrates' Courts Act 1980 s 80 (as amended) (see MAGISTRATES) (Criminal Justice Act 1991 s 80(4)(b) (as so added)).

14 Ibid s 82(5).

UPDATE

526 Prisoner custody officers acting in pursuance of prisoner escort arrangements

NOTE 13--1973 Act s 34A (as added) now Powers of Criminal Courts (Sentencing) Act 2000 s 142.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(4) PRISONER ESCORTS/527. Breaches of discipline by prisoners.

527. Breaches of discipline by prisoners.

Where a prisoner¹, for whose delivery or custody a prisoner custody officer² has been responsible in pursuance of prisoner escort arrangements³, is delivered to a prison⁴, he is deemed, for the purpose of prison rules⁵ relating to disciplinary offences, to have been in the custody of the governor of the prison or, in the case of a contracted-out prison⁶, its director⁷ at all times during the period for which the prisoner custody officer was so responsible⁸. In the case of any breach by the prisoner at any time during that period of such prison rules, a disciplinary charge may be laid against him by the prisoner custody officer⁹.

1 For the meaning of 'prisoner' see PARA 524 note 3 ante.

2 For the meaning of 'prison' see PARA 524 note 4 ante. For the meaning of 'prisoner custody officer' see PARA 524 note 10 ante. As to prisoner custody officers see PARA 528 post.

3 For the meaning of 'prisoner escort arrangements' see PARA 524 text to note 12 ante.

4 Criminal Justice Act 1991 s 83(1) (s 83 substituted by the Criminal Justice and Public Order Act 1994 s 95).

5 'Prison rules', in relation to a prison situated in a part of the British Islands outside England and Wales, means rules made under any provision of the law of that part which corresponds to the Prison Act 1952 s 47 (as amended) (see PARAS 501-502 ante); Criminal Justice Act 1991 s 83(5) (as substituted: see note 4 supra). 'British Islands' means the United Kingdom, the Channel Islands and the Isle of Man: Interpretation Act 1978 s 5, Sch 1. For the meaning of 'United Kingdom' see PARA 504 note 1 ante.

6 For the meaning of 'contracted-out prison' see PARA 532 note 5 post.

7 As to the directors of contracted-out prisons see PARA 533 post.

8 Criminal Justice Act 1991 s 83(2) (as substituted: see note 4 supra). Nothing in this provision enables a prisoner to be punished under prison rules for any act or omission of his for which he has already been punished by a court: s 83(4) (as so substituted).

9 Ibid s 83(3) (as substituted: see note 4 supra). It is envisaged that prisoners under private escort will, for the purposes of appealing against disciplinary charges, have the same access to the Prisons Ombudsman as other prisoners: HC Official Report, SC B (Criminal Justice and Public Order Bill) 15 February 1994, col 790. As to the Prisons Ombudsman see PARAS 509 ante, 572 post.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(4) PRISONER ESCORTS/528. Prisoner custody officers.

528. Prisoner custody officers.

The Secretary of State¹ may arrange for the escorting of prisoners² to be carried out by prisoner custody officers³. Such an officer may also perform custodial duties at a contracted-out prison⁴. The Secretary of State is responsible for the certification of officers. Any person may apply to the Secretary of State for the issue of a certificate in respect of him⁵ which may only be issued where the Secretary of State is satisfied that he is a fit and proper person to perform the relevant functions⁶ and has received training to such standard as he may consider appropriate for the performance of those functions⁷. Where the Secretary of State issues a certificate, then, subject to any suspension⁸ or revocation⁹, it continues in force until such date or the occurrence of such event as may be specified in the certificate¹⁰. A certificate authorising the performance of both escort functions¹¹ and custodial duties¹² may specify different dates or events as respects those functions and duties respectively¹³.

Where at any time (1) in the case of a prisoner custody officer acting in pursuance of prisoner escort arrangements¹⁴, it appears to the prisoner escort monitor¹⁵ for the area concerned that the officer is not a fit and proper person to perform escort functions; (2) in the case of a prisoner custody officer performing custodial duties at a contracted-out prison, it appears to the controller¹⁶ of that prison that the officer is not a fit and proper person to perform custodial duties; or (3) in the case of a prisoner custody officer performing contracted-out functions¹⁷ at a directly managed prison¹⁸, it appears to the governor of that prison that the officer is not a fit and proper person to perform custodial duties¹⁹, the prisoner escort monitor controller or governor may refer the matter to the Secretary of State for a decision²⁰ and, in such circumstances as may be prescribed by regulations made by the Secretary of State, suspend the officer's certificate so far as it authorises the performance of escort functions or, as the case may be, custodial duties pending that decision²¹.

Where at any time it appears to the Secretary of State that a prisoner custody officer is not a fit and proper person to perform escort functions or custodial duties, he may revoke that officer's certificate so far as it authorises the performance of those functions or duties²².

If any person, for the purpose of obtaining a certificate for himself or for any other person, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, he is liable on summary conviction to a fine not exceeding level 4 on the standard scale²³.

Any person who assaults a prisoner custody officer acting in pursuance of prisoner escort arrangements²⁴, performing custodial duties at a contracted-out prison, or performing contracted-out functions at a directly managed prison, is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both²⁵. Any person who resists or wilfully obstructs a prisoner custody officer acting in pursuance of prisoner escort arrangements, performing custodial duties at a contracted-out prison, or performing contracted-out functions at a directly managed prison, is liable on summary conviction to a fine not exceeding level 3 on the standard scale²⁶.

1 As to the Secretary of State see PARA 505 ante.

2 For the meaning of 'prisoner' see PARA 524 note 3 ante.

3 See the Criminal Justice Act 1991 s 80 (as amended); and PARA 524 ante. For the meaning of 'prisoner custody officer' see PARA 524 note 10 ante.

4 See *ibid* ss 85 (as amended), 86 (see PARAS 533-534 post). For the meaning of 'contracted-out prison' see PARA 532 note 5 post. For the meaning of 'prison' see PARA 524 note 4 ante.

5 *Ibid* s 89(2), Sch 10 para 2(1). 'Certificate' means a certificate under s 89 (as amended): Sch 10 para 1. If any person, for the purpose of obtaining a certificate for himself or for any other person makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, he is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Sch 10 para 5. As to the standard scale see PARA 517 note 4 ante.

6 'The relevant functions', in relation to a certificate, means the escort functions or custodial duties authorised by the certificate: *ibid* Sch 10 para 1.

7 *Ibid* Sch 10 para 2(2).

8 *Ie* under *ibid* Sch 10 para 3 (as amended): see Sch 10 para 2(3).

9 *Ie* under *ibid* Sch 10 para 4: see Sch 10 para 2(3).

10 *Ibid* Sch 10 para 2(3).

11 'Escort functions' means the functions specified in *ibid* s 80(1) (as amended): s 89(3).

12 For the meaning of 'custodial duties' see PARA 524 note 10 ante.

13 Criminal Justice Act 1991 Sch 10 para 2(4).

14 For the meaning of 'prisoner escort arrangements' see PARA 524 text to note 12 ante.

15 For the meaning of 'prisoner escort monitor' see PARA 525 note 3 ante.

16 As to the controller of a contracted-out prison see PARA 533 post.

17 For the meaning of 'contracted-out functions' see PARA 529 note 14 post.

18 For the meaning of 'directly managed prison' see PARA 529 note 14 post.

19 Criminal Justice Act 1991 Sch 10 para 3(1) (para 3 amended by the Criminal Justice and Public Order Act 1994 s 101(9), (10)).

20 *Ie* under the Criminal Justice Act 1991 Sch 10 para 4: see Sch 10 para 3(2).

21 *Ibid* Sch 10 para 3(2) (as amended: see note 19 supra). The power to make such regulations is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: Sch 10 para 3(3).

The prescribed circumstances for the purposes of Sch 10 para 3 (as amended) are (1) where (a) an allegation has been made against a prisoner custody officer acting in pursuance of prisoner escort arrangements, performing custodial duties at a contracted-out prison or performing contracted-out functions at a directly managed prison; or (b) the officer has been charged with a criminal offence or disciplinary action is being taken against him by his employer; or (c) it appears to the prisoner escort monitor or (as the case may be) controller or governor that the officer is, by reason of physical or mental illness, or for any other reason, incapable of satisfactorily carrying out his duties; and (2) the prisoner escort monitor or (as the case may be) controller or governor considers that the suspension of the certificate would be conducive to the maintenance of order or discipline in the prison or (as the case may be) the performance of the functions set out in the Criminal Justice Act 1991 s 80(1) (as amended) (see PARA 524 ante) (arrangements for the provision of prisoner escorts): see the Criminal Justice Act 1991 (Suspension of Prisoner Custody Officer Certificate) Regulations 1992, SI 1992/727, reg 3 (amended by SI 1994/3193).

22 Criminal Justice Act 1991 Sch 10 para 4.

23 *Ibid* Sch 10 para 5.

24 A prisoner custody officer must not be regarded as acting in pursuance of prisoner escort arrangements at any time when he is not readily identifiable as such an officer (whether by means of a uniform or badge which he is wearing or otherwise): *ibid* s 90(4).

25 *Ibid* s 90(1) (s 90(1), (3) amended by the Criminal Justice and Public Order Act 1994 s 101(5)). The Firearms Act 1968 s 17(2) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 676-677)

(additional penalty for possession of firearms when committing certain offences) applies to such offences:
Criminal Justice Act 1991 s 90(2).

26 Ibid s 90(3) (as amended: see note 25 supra).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(5) PRISON ESTABLISHMENTS/529. Provision for prisons.

(5) PRISON ESTABLISHMENTS

529. Provision for prisons.

The Secretary of State¹, with Treasury approval, may alter, enlarge or rebuild any prison and build new prisons²; he may also provide new prisons by declaring to be a prison any building or part of a building built for the purpose or vested in him or under his control or any floating structure or part of such a structure constructed for the purpose or vested in him or under his control³. He may purchase by agreement or compulsorily acquire any land needed for the alteration, enlargement or rebuilding of a prison or for a new prison, or for any purpose connected with the management of a prison⁴. Certain provisions of the Compulsory Purchase Act 1965⁵ apply to such a purchase by agreement⁶, and the Acquisition of Land Act 1981 applies to such a compulsory purchase⁷. Any person authorised in writing by the Secretary of State may enter any land and survey it for the purpose of enabling the Secretary of State to determine whether to exercise his powers of acquisition⁸ in respect of that land⁹; compensation for damage is recoverable from the Secretary of State¹⁰, disputes being determined by the Lands Tribunal¹¹. Any person who wilfully obstructs a person acting in the exercise of his powers under these provisions is guilty of an offence¹².

The Criminal Justice Act 1991 provides for the contracting out of prisons¹³. The Secretary of State may also enter into a contract with another person for any functions at a directly managed prison to be performed by prisoner custody officers who are provided by that person and are authorised to perform custodial duties¹⁴.

1 As to the Secretary of State see PARA 505 ante.

2 Prison Act 1952 s 33(1). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

3 Ibid s 33(2) (substituted by the Criminal Justice and Public Order Act 1994 s 100(1)). Such a declaration may at any time be revoked by the Secretary of State: Prison Act 1952 s 33(4). A declaration is not sufficient to vest the legal estate of any building in him: s 33(5) (amended by the Prison Commissioners Dissolution Order 1963, SI 1963/597, art 3(2), Sch 1).

The Secretary of State may by order, or in a declaration under the Prison Act 1952 s 33 (as amended) direct, that, for the purpose of any enactment, rule of law or custom dependent on a prison being the prison of any county or place, any prison situated in that county or in the county in which that place is situated, or any prison provided by him in pursuance of this Act, is to be deemed to be the prison of that county or place: see ss 33(3), 34(2). Such an order is exercisable by statutory instrument: see s 52(1). The power to make an order includes power to revoke or vary such an order: see s 52(3).

4 See ibid s 36(1) (amended by the Prison Commissioners Dissolution Order 1963, SI 1963/597, art 3(2), Sch 1). This includes the provision of accommodation for prison staff: see the Prison Act 1952 s 36(1). As to prison staff accommodation see also PARA 521 ante.

Since 1963, when the Prison Commissioners were dissolved, the Secretary of State has had the exclusive power to purchase.

5 I.e. the Compulsory Purchase Act 1965 Pt I (ss 1-32) (as amended) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq), other than ss 4-8, 10, 31: see the Prison Act 1952 s 36(3) (as amended: see note 6 infra).

6 Ibid s 36(3) (amended by the Compulsory Purchase Act 1965 s 38, Sch 6).

7 Prison Act 1952 s 36(2) (substituted by the Prison Commissioners Dissolution Order 1963, SI 1963/597, art 3(2), Sch 1; and amended by the Acquisition of Land Act 1981 s 34, Sch 4 para 1, Sch 6 Pt I). As to the Acquisition of Land Act 1981 see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 556 et seq.

8 le under the Prison Act 1952 s 36 (as amended): see the Criminal Justice Act 1972 s 60(1).

9 Ibid s 60(1). The power to survey land is to be construed as including power to search and bore for the purpose of ascertaining the nature of the sub-soil: s 60(2).

A person authorised under s 60 (as amended) to enter any land must, if so required, produce evidence of his authority before entering, and must not (1) demand admission as of right to any land which is occupied unless 14 days' notice of the intended entry has been given to the occupier; or (2) carry out any works authorised by s 60(2) unless notice of his intention to do so is included in the required notice: s 60(3).

10 See ibid s 60(4).

11 See ibid s 60(5). As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

12 Ibid s 60(6). Such a person is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 60(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 517 note 4 ante.

13 See the Criminal Justice Act 1991 ss 84-88 (as amended); and PARAS 514-516 ante, 532-535, 538, 573 post.

14 Ibid s 88A(1) (s 88A added by the Criminal Justice and Public Order Act 1994 s 99). The Criminal Justice Act 1991 s 86 applies in relation to a prisoner custody officer performing contracted-out functions at a directly managed prison as it applies in relation to such an officer performing custodial duties at a contracted-out prison (see PARA 534 post): s 88A(2) (as so added). As to prisoner custody officers see PARA 528 ante. Any reference in these provisions to the performance of functions or custodial duties at a directly managed prison includes a reference to the performance of functions or such duties for the purposes of, or for purposes connected with, such a prison: s 88A(4) (as so added). In Pt IV (ss 73-92) (as amended), 'contracted-out functions' means any functions which, by virtue of a contract under s 88A (as added), fall to be performed by prisoner custody officers; and 'directly managed prison' means a prison which is not a contracted-out prison: s 88A(5) (as so added), s 92(1) (definition added by the Criminal Justice and Public Order Act 1994 ss 93(5), 98, 101(7)).

UPDATE

529 Provision for prisons

NOTE 3--1952 Act s 52(3) amended: Police and Justice Act 2006 Sch 14 para 1(4).

NOTES 4-7--The power to purchase land conferred on the Secretary of State by the 1952 Act s 36 includes, and is deemed always to have included, power to purchase easements and other rights over land, including easements and other rights not previously in existence: Criminal Justice Act 1988 s 167.

TEXT AND NOTE 11--Reference to the Lands Tribunal is now to the Upper Tribunal: Criminal Justice Act 1972 s 60(5) (amended by SI 2009/1307).

NOTE 14--1991 Act s 88A(2) amended: Offender Management Act 2007 s 17(2).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(5) PRISON ESTABLISHMENTS/530. Classification of prisons.

530. Classification of prisons.

Every adult prison for male prisoners falls into one of four categories: local prisons, training prisons, dispersal prisons and open prisons¹. Prisons for women are simply categorised as either closed or open².

Local prisons tend to be located in towns or cities and are where most prisoners are held on remand and when first convicted³. Training prisons house convicted category B and C prisoners⁴ and vary in the kind of regime they offer. Dispersal prisons are fewer in number⁵ and are designed to hold long term prisoners in the highest conditions of security. In three of the dispersal prisons are located special secure units to house exceptional risk category A prisoners⁶. The most subversive and disruptive prisoners may be ordered to be removed from association and transferred to a close supervision centre. Close supervision centres exist as separate units within Woodhill, Hull and Durham prisons⁷. Open prisons accommodate category D prisoners in the most relaxed conditions of security and control.

1 As to types of prison establishments for adults see PARAS 639-642 post.

2 As to prisons for women see PARA 641 post.

3 As to remand centres see PARA 701-800 post.

4 As to the security categorisation of prisoners see PARA 537 post.

5 At the date at which this volume states the law there were six dispersal prisons, namely Full Sutton, Frankland, Long Lartin, Whitemoor, Wakefield and Belmarsh.

6 The three special secure units are located in Belmarsh, Full Sutton and Whitemoor. Conditions inside special secure units were criticised by the former chief medical officer, Sir Donald Acheson, in 1996: see *Review of the effects on health of the regimes in the special secure units at Full Sutton, Whitemoor and Belmarsh prisons*, June 1996. See also *Special Secure Units: Inhuman or Degrading Treatment*, March 1997, Amnesty International, Index EUR 45/06/97. As to the legality of the Prison Service's former policy of closed legal and family visits to prisoners held in special secure units see *R v Home Secretary, ex p O'Dhuibhir and O'Brien* (1997) Independent, 6 March, CA.

7 The close supervision centre regime was set up in 1998: see the Prison Rules 1999, SI 1999/728, r 46; and PARA 593 post. See also *R v Secretary of State for the Home Department, ex p Mehmet and O'Connor* (1999) 11 Admin LR 529, Times, 18 February, DC.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/(5) PRISON ESTABLISHMENTS/531. Discontinuance of prisons.

531. Discontinuance of prisons.

The Secretary of State¹ may by order close any prison², but if it is the only prison in a county at large he may make the order only for special reasons which must be stated in the order³. The appropriation of a prison as a remand centre, young offender institution or secure training centre is not a closure for this purpose⁴.

Until 1972 the Secretary of State was bound⁵ to convey to the appropriate local authority on payment of a certain sum to the Exchequer all prisons that existed before 1 April 1878⁶ and had been closed, and in the absence of a request for such conveyance or failure to pay the money to sell the prison and pay the net proceeds to the Exchequer. By the Criminal Justice Act 1972 these provisions⁷ were repealed⁸ and a local authority now has no right on closure to acquire any prison within its area.

1 As to the Secretary of State see PARA 505 ante.

2 Prison Act 1952 s 37(1). See eg the Closure of Prisons (HM Prison Oxford) Order 1996, SI 1996/2126. See also note 3 infra.

3 Prison Act 1952 s 37(2), (3). Such orders, being local in character, are not generally noted in this work. The requirement relating to special reasons does not apply to remand centres, young offender institutions or secure training centres: see s 43 (as substituted and amended). As to remand centres see PARA 701 post; as to young offender institutions see PARA 643 et seq post; as to secure training centres see PARA 657 et seq post.

A closure order under s 37 is made by statutory instrument and must be laid before Parliament: see s 52(1), (2) (amended by the Criminal Justice Act 1967 ss 66(4), 103(2), Sch 7 Pt I).

4 See the Prison Act 1952 s 37(4) (amended by the Criminal Justice Act 1982 s 77, Sch 14; the Criminal Justice and Public Order Act 1994 s 168(2), Sch 10 para 8; and by virtue of the Criminal Justice Act 1988 s 123(6), Sch 8 Pt I para 1).

5 See the Prison Act 1952 s 38 (repealed); and note 8 infra.

6 Ie the date on which all local prisons were taken over by central government from the local justices of the peace under the Prison Act 1877 (repealed).

7 See note 5 supra.

8 The Prison Act 1952 s 38 was repealed in respect of any prison closed after 1 January 1973 unless the Secretary of State had before 1 November 1971 informed the appropriate authority of his intention to close it after that date: see the Criminal Justice Act 1972 ss 59, 64(2), Sch 6 Pt II.

UPDATE

531 Discontinuance of prisons

NOTE 8--Criminal Justice Act 1972 s 59 repealed: Statute Law (Repeals) Act 2008.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/ (6) CONTRACTING OUT OF PRISONS/532. Power to contract out.

(6) CONTRACTING OUT OF PRISONS

532. Power to contract out.

The Secretary of State¹ may enter into a contract with another person for the provision or running (or the provision and running) by him, or (if the contract so provides) for the running by sub-contractors² of his, of any prison³ or part of a prison⁴. Such a prison or part of a prison is called a contracted-out prison⁵.

A person who is or has been employed to perform contracted-out functions at a directly managed prison⁶, is guilty of an offence if he discloses, otherwise than in the course of his duty or as authorised by the Secretary of State, any information which he acquired in the course of his employment and which relates to a particular prisoner⁷. A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both, and on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both⁸.

1 As to the Secretary of State see PARA 505 ante.

2 'Sub-contractor', in relation to a contracted-out prison, means a person who has contracted with the contractor for the running of it or any part of it: Criminal Justice Act 1991 s 84(4) (s 84 substituted by the Criminal Justice and Public Order Act 1994 s 96).

3 For the meaning of 'prison' see PARA 524 note 4 ante.

4 Criminal Justice Act 1991 s 84(1) (as substituted: see note 2 supra). Where the Secretary of State grants a lease or tenancy of land (including an underlease or sub-tenancy) for the purposes of any contract under s 84 (as substituted), the Landlord and Tenant Act 1954 Pt II (ss 23-46) (as amended) (security of tenure), the Law of Property Act 1925 s 146 (as amended) (restrictions on and relief against forfeiture), the Landlord and Tenant Act 1927 s 19(1), (2), (3), the Landlord and Tenant Act 1988 (covenants not to assign etc) and the Agricultural Holdings Act 1986 do not apply to it: Criminal Justice Act 1991 s 84(3) (as so substituted); and see AGRICULTURAL LAND vol 1 (2008) PARA 321 et seq; LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 708.

5 See *ibid* s 84(4) (as substituted: see note 2 supra). 'Contracted-out prison' means a prison or part of a prison for the running of which a contract under s 84 (as substituted) is for the time being in force: ss 84(4), 92(1) (definition amended by the Criminal Justice and Public Order Act 1994 93(5), 101(7)).

While a contract under the Criminal Justice Act 1991 s 84 (as substituted) for the running of a prison or part of a prison is in force (1) the prison or part must be run subject to and in accordance with s 85 (as amended) (see PARA 533 post) and s 86 (see PARA 534 post), the Prison Act 1952 (as modified by the Criminal Justice Act 1991 s 87 (as amended)) and prison rules; and (2) in the case of a part, that part and the remaining part must each be treated for the purposes of ss 85-88A (as amended) (see PARAS 514-516, 529 ante, 533-535, 538, 573 post) as if they were separate prisons: s 84(2). 'Prison rules' means rules made under the Prison Act 1952 s 47 (as amended) (see PARA 501-502 ante): Criminal Justice Act 1991 s 99(1). As to the modification of the Prison Rules 1999, SI 1999/728 (see PARAS 501-502 ante) in their application to contracted-out prisons, see r 82; and PARAS 517, 522 ante, 533 post. As to provisions relating to contracted-out prisons in Scotland and Northern Ireland see the Criminal Justice and Public Order Act 1994 ss 118-128 (as amended).

6 For the meaning of 'contracted-out functions' see PARA 529 note 14 ante. For the meaning of 'directly managed prison' see PARA 529 note 14 ante.

7 Criminal Justice Act 1991 s 91(1)(b) (amended by the Criminal Justice and Public Order Act 1994 s 101(6)).

8 Criminal Justice Act 1991 s 91(2). As to the statutory maximum see PARA 524 note 19 ante.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/ (6) CONTRACTING OUT OF PRISONS/533. Officers of contracted-out prisons.

533. Officers of contracted-out prisons.

Instead of a governor, every contracted-out prison¹ must have a director, who must be a prisoner custody officer² appointed by the contractor³ and specially approved by the Secretary of State⁴, and a controller, who must be a Crown servant appointed by the Secretary of State, and every officer of such a prison who performs custodial duties⁵ must be a prisoner custody officer who is authorised to perform such duties or a prison officer⁶ who is temporarily attached to the prison⁷.

The director has such functions as are conferred on him by the Prison Act 1952⁸ or as may be conferred on him by prison rules⁹. However, the director must not: (1) inquire into a disciplinary charge laid against a prisoner, conduct the hearing of such a charge or make, remit or mitigate an award in respect of such a charge¹⁰; or (2) except in cases of urgency, order the removal of a prisoner from association with other prisoners, the temporary confinement of a prisoner in a special cell or the application to a prisoner of any other special control or restraint¹¹.

The controller has such functions as may be conferred on him by prison rules and is under a duty¹²: (a) to keep under review, and report to the Secretary of State on, the running of the prison by or on behalf of the director¹³; and (b) to investigate, and report to the Secretary of State on, any allegations made against prisoner custody officers performing custodial duties at the prison or prison officers who are temporarily attached to the prison¹⁴. The contractor and any sub-contractor¹⁵ of his are each under a duty to do all that they reasonably can (whether by giving directions to the officers of the prison or otherwise) to facilitate the exercise by the controller of all such functions¹⁶.

1 For the meaning of 'contracted-out prison' see PARA 532 note 5 ante. For the meaning of 'prison' see PARA 524 note 4 ante.

2 For the meaning of 'prisoner custody officer' see PARA 524 note 10 ante.

3 'The contractor', in relation to a contracted-out prison, means the person who has contracted with the Secretary of State for the running of it: Criminal Justice Act 1991 s 84(4) (s 84 substituted by the Criminal Justice and Public Order Act 1994 s 96).

4 As to the Secretary of State see PARA 505 ante.

5 For the meaning of 'custodial duties' see PARA 524 note 10 ante.

6 'Prison officer' means an officer of a directly managed prison: Criminal Justice Act 1991 s 92(1) (definition added by the Criminal Justice and Public Order Act 1994 ss 93(5), 101(7)). For the meaning of 'directly managed prison' see PARA 529 note 14 ante.

7 Criminal Justice Act 1991 s 85(1) (amended by the Criminal Justice and Public Order Act 1994 s 97(1), (2)).

8 As modified by the Criminal Justice Act 1991 s 87 (as amended) (see PARAS 514-516 ante); see s 85(2).

9 Ibid s 85(2), which is expressed to be subject to s 85(3). For the meaning of 'prison rules' see PARA 532 note 5 ante.

10 Ibid s 85(3)(a).

11 Ibid s 85(3)(b). For the meaning of 'prisoner' see PARA 524 note 3 ante. Where the director exercises the powers set out in s 85(3)(b), in cases of urgency, he must notify the controller of that fact immediately: Prison Rules 1999, SI 1999/728, r 82(2).

12 Criminal Justice Act 1991 s 85(4).

13 Ibid s 85(4)(a).

14 Ibid s 85(4)(b) (amended by the Criminal Justice and Public Order Act 1994 s 97(1), (2)).

15 For the meaning of 'sub-contractor' see PARA 532 note 2 ante.

16 Criminal Justice Act 1991 s 85(5) (amended by the Criminal Justice and Public Order Act 1994 s 101(1)).

UPDATE

533 Officers of contracted-out prisons

TEXT AND NOTE 7--1991 Act s 85(1) further amended: Offender Management Act 2007 s 18(3).

NOTE 9--1991 Act s 85(2) amended: 2007 Act Sch 5 Pt 2.

TEXT AND NOTES 10, 11--1991 Act s 85(3) repealed: 2007 Act s 19, Sch 5 Pt 2.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/ (6) CONTRACTING OUT OF PRISONS/534. Powers and duties of prisoner custody officers employed at contracted-out prisons.

534. Powers and duties of prisoner custody officers employed at contracted-out prisons.

A prisoner custody officer¹ performing custodial duties² at a contracted-out prison³ has the power to⁴: (1) to search in accordance with prison rules⁵ any prisoner⁶ who is confined in the prison⁷; and (2) to search any other person who is in or is seeking to enter the prison, and any article in such a person's possession⁸. His duties as respects prisoners confined in the prison are⁹: (a) to prevent their escape from lawful custody¹⁰; (b) to prevent, or detect and report on, the commission or attempted commission by them of other unlawful acts¹¹; (c) to ensure good order and discipline on their part¹²; and (d) to attend to their wellbeing¹³. These powers include power to use reasonable force where necessary¹⁴.

1 For the meaning of 'prisoner custody officer' see PARA 524 note 10 ante.

2 Any reference in the Criminal Justice Act 1991 Pt IV (ss 80-92) (as amended) to custodial duties at a contracted-out prison includes a reference to custodial duties in relation to a prisoner who is outside such a prison for temporary purposes: s 92(1A) (added by the Criminal Justice and Public Order Act 1994 ss 93(7), 98). For the meaning of 'custodial duties' see PARA 524 note 10 ante.

3 For the meaning of 'contracted-out prison' see PARA 532 note 5 ante. For the meaning of 'prison' see PARA 524 note 4 ante.

4 Criminal Justice Act 1991 s 86(1).

5 For the meaning of 'prison rules' see PARA 532 note 5 ante.

6 For the meaning of 'prisoner' see PARA 524 note 3 ante.

7 Criminal Justice Act 1991 s 86(1)(a). Section 86 applies in relation to a prisoner custody officer performing contracted-out functions at a directly managed prison (see PARAS 529 ante) as it applies in relation to such an officer performing custodial duties at a contracted-out prison: s 88A(2) (s 88A added by the Criminal Justice and Public Order Act 1994 s 99). For the meaning of 'contracted-out functions' see PARA 529 note 14 ante. For the meaning of 'directly managed prison' see PARA 529 note 14 ante.

8 Criminal Justice Act 1991 s 86(1)(b). The powers conferred by s 86(1)(b) to search a person must not be construed as authorising a prisoner custody officer to require a person to remove any of his clothing other than an outer coat, jacket or gloves: s 86(2).

9 Ibid s 86(3).

10 Ibid s 86(3)(a).

11 Ibid s 86(3)(b).

12 Ibid s 86(3)(c).

13 Ibid s 86(3)(d).

14 Ibid s 86(4).

UPDATE

534 Powers and duties of prisoner custody officers employed at contracted-out prisons

TEXT AND NOTES--See also 1991 Act s 86A (added by Offender Management Act 2007 s 17(1)) (power of prisoner custody officers to detain suspected offenders); and 1991 Act s 86B (added by 2007 Act s 18(2)) (powers of authorised persons to perform custodial duties). In exercise of the power conferred on him by s 86B(2), the Secretary of State has specified the restricted activities which a director of a contracted-out prison may under s 86B(3) authorise to be carried out by a worker at the prison who is not a prisoner custody officer: Contracted-Out Prisons (Specification of Restricted Activities) Order 2009, SI 2009/576. See further Serious Crime Act 2007 Sch 6 para 19(b).

TEXT AND NOTE 8--1991 Act s 86(1)(b), (2) amended: Offender Management Act 2007 s 16(1).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/1. ADMINISTRATION AND ESTABLISHMENT/ (6) CONTRACTING OUT OF PRISONS/535. Intervention by the Secretary of State in an emergency.

535. Intervention by the Secretary of State in an emergency.

In the case of a contracted-out prison¹, where it appears to the Secretary of State²: (1) that the director³ has lost, or is likely to lose, effective control of the prison⁴ or any part of it⁵; and (2) that the making of an appointment⁶ is necessary in the interests of preserving the safety of any person, or of preventing serious damage to any property⁷, the Secretary of State may appoint a Crown servant to act as governor of the prison for the period beginning with the time specified in the appointment, and ending with the time specified in the notice of termination⁸. During that period⁹: (a) all the functions which would otherwise be exercisable by the director or the controller are exercisable by the governor¹⁰; (b) the contractor¹¹ and any sub-contractor¹² of his must each do all that he reasonably can to facilitate the exercise by the governor of those functions¹³; and (c) the officers of the prison must comply with any directions given by the governor in the exercise of those functions¹⁴.

Where the Secretary of State is satisfied that the governor has secured effective control of the prison or, as the case may be, the relevant part of it, and that the governor's appointment is no longer necessary¹⁵, he must, by a notice to the governor, terminate the appointment at a time specified in the notice¹⁶.

As soon as practicable after making or terminating an appointment, the Secretary of State must give a notice of the appointment, or a copy of the notice of termination, to the contractor, any sub-contractor of his, the director and the controller¹⁷.

1 For the meaning of 'contracted-out prison' see PARA 532 note 5 ante.

2 Criminal Justice Act 1991 s 88(1). As to the Secretary of State see PARA 505 ante.

3 As to the director of a contracted-out prison see PARA 533 ante.

4 For the meaning of 'prison' see PARA 524 note 4 ante.

5 Criminal Justice Act 1991 s 88(1)(a).

6 *Ie* under *ibid* s 88(2): see s 88(1)(b).

7 *Ibid* s 88(1)(b).

8 *Ibid* s 88(2).

9 *Ibid* s 88(3).

10 *Ibid* s 88(3)(a). As to the controller of a contracted-out prison see PARA 533 ante.

11 For the meaning of 'contractor' see PARA 533 note 3 ante.

12 For the meaning of 'sub-contractor' see PARA 532 note 2 ante.

13 Criminal Justice Act 1991 s 88(3)(b) (amended by the Criminal Justice and Public Order Act 1994 s 101(2)).

14 Criminal Justice Act 1991 s 88(3)(c).

15 *Ie* as mentioned in *ibid* s 88(1)(b) (see the text to note 7 *supra*): see s 88(4).

16 *Ibid* s 88(4).

17 Ibid s 88(5) (amended by the Criminal Justice and Public Order Act 1994 s 101(3)).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(1) CLASSIFICATION AND CUSTODY/536. Classification generally.

2. CONVICTED PRISONERS

(1) CLASSIFICATION AND CUSTODY

536. Classification generally.

Prisoners are classified, in accordance with any directions of the Secretary of State¹, having regard to their age, temperament and record and with a view to maintaining good order and facilitating training and, in the case of convicted prisoners², of furthering the purpose of their training and treatment as provided³. Prisoners committed or attached for contempt of court, or for failing to do or abstain from doing anything required to be done or left undone are treated as a separate class of prisoner for these purposes⁴. Unconvicted prisoners must be kept out of contact with convicted prisoners as far as the governor considers it can reasonably be done, unless and to the extent that they have consented to share residential accommodation or participate in any activity with convicted prisoners⁵; and they must under no circumstances be required to share cells with convicted prisoners⁶.

Nothing in these provisions requires a prisoner to be deprived unduly of the society of other persons⁷.

1 As to the Secretary of State see PARA 505 ante.

2 Subject to the special rules relating to prisoners committed for contempt of court, 'convicted prisoner' means a prisoner who has been convicted or found guilty of an offence or committed or attached for contempt of court or for failing to do or abstain from doing anything required to be done or left undone, and the expression 'unconvicted prisoner' is to be construed accordingly: Prison Rules 1999, SI 1999/728, r 2(1). As to prisoners committed for contempt of court see r 7(3); the text and note 4 infra; and PARA 699 post. As to unconvicted prisoners see the text and notes 5-6 infra; and PARA 694 et seq post.

3 Ibid r 7(1). As to the purpose of prison training and treatment see r 3; and PARA 541 post.

4 Ibid r 7(3)(a). Such prisoners may be permitted to associate with any other class of prisoners if they are willing to do so: r 7(3)(b). They must have the same privileges as an unconvicted prisoner (ie under rr 20(5), 23(1), 35(1): see PARA 697 post): see r 7(3)(c).

5 Ibid r 7(2)(a).

6 Ibid r 7(2)(b).

7 Ibid r 7(4). As to removal from association see r 45; and PARA 592 post. As to allocation to a close supervision centre see r 46; and PARA 593 post. As to temporary confinement in a special cell see r 48; and PARA 594 post. As to segregation pending a disciplinary charge see r 53(4); and PARA 598 post.

UPDATE

536 Classification generally

NOTE 2--A prisoner who has pleaded guilty but has not been sentenced is a convicted prisoner: *R (on the application of Edwards-Sayer) v Secretary of State for the Home Department* [2008] EWHC 467 (Admin), [2008] 1 WLR 2280, DC.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(1) CLASSIFICATION AND CUSTODY/537. Security categorisation.

537. Security categorisation.

As a matter of administrative practice and not by statutory requirement, adult male prisoners¹ are placed into one of four security categories, as follows²:

- 11 (1) category A (those whose escape would be highly dangerous to the public or the police or to the security of the state, no matter how unlikely that escape might be, and for whom the aim must be to make escape impossible);
- 12 (2) category B (those for whom the very highest conditions of security are not necessary but for whom escape must be made very difficult);
- 13 (3) category C (those who cannot be trusted in open conditions but who do not have the ability or resources to make a determined escape attempt and for whom basic security precautions are sufficient); and
- 14 (4) category D (those who can reasonably be trusted to serve their sentence in open conditions).

A decision to place a prisoner in category A is made by the Category A Committee, a permanent body comprising senior Prison Service personnel which meets on a regular basis throughout the year³. A decision to allocate a prisoner to category A has a direct effect on a prisoner's prospects of release on licence and accordingly fairness demands that the purely administrative process of allocation to category A is subject to a duty of prior disclosure of at least the gist of every matter relevant to the proposed categorisation decision so that the prisoner may make informed representations to the Committee⁴. A prisoner is entitled to be given reasons for a decision to allocate or maintain him in category A⁵. The same requirements of procedural fairness do not apply to decisions to place a prisoner in category B, C or D⁶. The fact that a prisoner denies his guilt of his index offence may be taken into account when considering the risk a prisoner may pose in the event of an escape⁷. The Category A Committee is a judicial authority⁸ and may accordingly take account of spent convictions when considering the risk a prisoner may pose in the event of escape⁹.

1 Unless an adult female prisoner is placed in category A (see head (1) in the text), in which case she will be allocated to Holloway Prison or H Wing at Durham Prison, she will be allocated to either an open or a closed prison depending on the outcome of a risk assessment which focuses on the needs of security and control. As to women prisoners see PARA 634 post; and as to women's prisons see PARA 641 post.

As to the categorisation of young offenders see PARA 649 post.

2 The four security categories are based on the recommendations contained in Lord Mountbatten of Burma's Report of the Inquiry into Prison Escapes and Security (Cmnd 3175) (1967) which followed the escape of George Blake from Wormwood Scrubs prison in 1966. See also *R v Secretary of State for the Home Department, ex p Duggan* [1994] 3 All ER 277, [1994] COD 258.

Detailed guidance on the process of allocation to categories B, C and D is contained in the Prison Service's *Manual on Sentence Management and Planning*. Guidance on the procedures governing the security categorisation of life sentence prisoners (male and female) is to be found in the Prison Service's *Lifer Manual*. The classification of prisoners does not fall within the scope of the rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (1950): Application 8575/79 *Brady v United Kingdom* (1981) 3 EHRR 297, EComHR. See also Application 10117/82 -- *v United Kingdom* (1984) 7 EHRR 140, EComHR (treatment of category A prisoners not inhuman in breach of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 3). As to the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) see PARA 504 ante.

3 For a statement of ministerial policy governing the working of the Category A Committee see the answer given by Mr Peter Lloyd in 216 HC Official Report (6th series), 15 December 1992, written answers, col 102.

Within security category A, prisoners are further assigned by the Category A Committee to one of three escape risk classifications: standard, high or exceptional escape risk. Exceptional escape risk prisoners are detained in one of the special secure units at Belmarsh, Whitemoor and Full Sutton: see PARA 530 ante. As to the procedural fairness requirements in relation to the process of escape risk classification see *R v Secretary of State for the Home Department, ex p Mulkerrins* (1998) Times, 3 February, CA; *R v Secretary of State for the Home Department, ex p Arif* (29 November 1996, unreported), DC.

4 See *R v Secretary of State for the Home Department, ex p Duggan* [1994] 3 All ER 277, [1994] COD 258. The duty of disclosure is subject to considerations of public interest immunity; and the initial allocation to category A, which may have to be made speedily following a prisoner's reception into custody, may be made without disclosure: see *R v Secretary of State for the Home Department, ex p Duggan* supra. See also *R v Secretary of State for the Home Department, ex p McAvooy* [1998] 1 WLR 790, [1998] COD 148, CA (confirming that there is no duty to disclose more than the gist of reports relevant to the category A decision).

5 *R v Secretary of State for the Home Department, ex p Duggan* [1994] 3 All ER 277, [1994] COD 258. See also *R v Secretary of State for the Home Department, ex p Mulkerrins* (1998) Times, 3 February, CA.

6 *R v Secretary of State for the Home Department, ex p Peries* (1997) Times, 30 July.

7 *R v Secretary of State for the Home Department, ex p Fenton-Palmer* (24 March 1997, unreported), DC.

8 lie within the meaning of the Rehabilitation of Offenders Act 1974.

9 *R v Secretary of State for the Home Department, ex p Purcell* (1998) Times, 5 March (the issue was conceded by the applicant).

UPDATE

537 Security categorisation

NOTE 2--As to the approach of the court when considering the re-categorisation of a prisoner, see *R (on the application of G) v Governor HMP Liverpool* [2008] All ER (D) 147 (Aug).

NOTE 4--In exceptional cases and subject to public interest immunity considerations, a prisoner may be granted an oral hearing and full disclosure of materials considered by a category A review committee: *R (on the application of Williams) v Secretary of State for the Home Department* [2002] EWCA Civ 498, [2002] 4 All ER 872, [2002] 1 WLR 2264.

NOTE 5--A prisoner in category A is also entitled to be given reasons for an escape risk classification decision: *R (on the application of Ali) v Director of High Security* [2009] EWHC 1732 (Admin), [2010] 2 All ER 82.

NOTE 6--As to the requirements of fairness in relation to the reclassification of a prisoner's security category, see *R (on the application of Hirst) v Secretary of State for the Home Department* [2001] All ER (D) 92 (Mar), CA; and *R (on the application of Palmer) v Secretary of State for the Home Department* (2004) Times, 13 September.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(1) CLASSIFICATION AND CUSTODY/538. Legal custody.

538. Legal custody.

Every prisoner is deemed to be in the legal custody of the governor of the prison¹ while he is confined in, or being taken to or from, any prison and while he is working, or is for any other reason, outside the prison in the custody or under the control of an officer of the prison and while he is being taken to any place in which he is required or authorised by or under the Prison Act 1952 or the Criminal Justice Act 1982 to be taken, or is kept in custody in pursuance of any such requirement or authorisation². Although a prisoner may be allowed outside the prison unescorted, it would appear that there is no general authority allowing him outside whilst remaining in legal custody³. During his term of imprisonment a prisoner may be removed by direction of the Secretary of State from the prison where he is confined to any other prison⁴.

Where a person is in the custody of a constable whose duty is to take that person to a prison service establishment and it is not practicable to secure that person's admission to the establishment, the person may lawfully be detained in the custody of a constable until he can be admitted or is required to appear before a court⁵.

1 See the Prison Act 1952 s 13(1). See also PARA 522 ante. In relation to a contracted-out prison, the reference to the governor is to be construed as a reference to the director: Criminal Justice Act 1991 s 87 (1), (4). As to the contracting out of prisons see PARAS 532-535 ante.

2 See the Prison Act 1952 s 13(2) (amended by the Criminal Justice Act 1961 s 41(1), Sch 4; and the Criminal Justice Act 1982 s 77, Sch 14 para 4).

In relation to a contracted-out prison, the reference in the Prison Act 1952 s 13(2) (as amended) to an officer of the prison is to be construed as a reference to a prisoner custody officer performing custodial duties at the prison or to a prison officer who is temporarily attached to the prison: Criminal Justice Act 1991 s 87(1), (6) (amended by the Criminal Justice and Public Order Act 1994 s 97(5)). As to prisoner custody officers see PARA 528 ante.

In relation to a directly managed prison, the reference in the Prison Act 1952 s 13(2) (as amended) to an officer of the prison is to be construed as including a reference to a prisoner custody officer performing custodial duties at the prison in pursuance of a contract under the Criminal Justice Act 1991 s 88A (as added) (see PARA 529 ante): s 88A(3)(a) (added by the Criminal Justice and Public Order Act 1994 s 99). For the meaning of 'directly managed prison' see PARA 529 note 14 ante. The reference to 'custodial duties' at a directly managed prison includes a reference to the performance of such duties for the purposes of, or for purposes connected with, such a prison: see the Criminal Justice Act 1991 s 88A(4) (as added); and PARA 529 ante.

A prisoner taken to and from a prison in custody must be exposed as little as possible to public observation, and proper care must be taken to protect him from curiosity and insult: Prison Rules 1999, SI 1999/728, r 40(1). A prisoner required to be taken in custody anywhere outside a prison must be kept in the custody of an appointed officer or a police officer: r 40(2).

3 *Home Office v Dorset Yacht Co Ltd* [1970] AC 1004, [1970] 2 All ER 294, HL. As to release and discharge see PARA 612 et seq post.

4 See the Prison Act 1952 s 12(2). As to the Secretary of State see PARA 505 ante.

A decision to transfer a prisoner pursuant to s 12(2) is susceptible to judicial review: see *R v Secretary of State for the Home Department, ex p McAvoy* [1984] 3 All ER 417, [1984] 1 WLR 1408. See also *R v Secretary of State for the Home Department, ex p McComb* (1991) Times, 15 April, [1991] COD 415, DC.

5 See the Imprisonment (Temporary Provisions) Act 1980 s 6(1), (2) (amended by the Criminal Justice and Public Order Act 1994 s 168(2), Sch 10 para 46; and by virtue of the Criminal Justice Act 1988 s 123(6), Sch 8 Pt I paras 1, 3(2), Pt II). Any reference in these provisions to a constable includes a reference to a prisoner custody officer (within the meaning of the Criminal Justice Act 1991 Pt IV (ss 73-92) (as amended): see PARA 524 note 10 ante) acting in pursuance of prisoner escort arrangements (see PARA 524 ante) or to a custody officer (within the meaning of the Criminal Justice and Public Order Act 1994 s 12 (as amended): see PARA 659 note 2 post) acting

in pursuance of escort arrangements (see PARA 663 et seq post): see the Imprisonment (Temporary Provisions) Act 1980 s 6(3) (added by the Criminal Justice and Public Order Act 1994 s 94(2)); and the Imprisonment (Temporary Provisions) Act 1980 s 6(4) (added by the Criminal Justice and Public Order Act 1994 Sch 10 para 46).

UPDATE

538 Legal custody

NOTE 5--1980 Act s 6(1), (2) further amended: Offender Management Act 2007 Sch 3 para 18. For transitional provision see 2007 Act Sch 4 para 7.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(1) CLASSIFICATION AND CUSTODY/539. Custody during trial.

539. Custody during trial.

During his trial, and when at the court of trial, a prisoner remains in the custody of the governor of the prison from which he has been brought or from which he would have come had he not been admitted to bail pending trial¹. The governor is responsible for the acts of his officers, including any unlawful detention of the prisoner after his acquittal and discharge by the court, even if the governor was not himself present and the illegal detention was not ordered by him².

1 See PARA 522 ante.

2 *Mee v Cruikshank* (1902) 86 LT 708. As to the duty to discharge the prisoner see PARA 523 ante.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(1) CLASSIFICATION AND CUSTODY/540. Prisoners unlawfully at large.

540. Prisoners unlawfully at large.

Any person who, having been sentenced to imprisonment, custody for life or detention in a young offender institution¹ or ordered to be detained in a young offender institution or secure training centre² or having been committed to a prison or remand centre³, is unlawfully at large, may be arrested by a constable without warrant and taken to the place in which he is required in accordance with law to be detained⁴.

Where any person sentenced to imprisonment, or to detention in a young offender institution, or ordered to be detained in a young offenders institution or in a secure training centre, is unlawfully at large at any time during the period for which he is liable to be detained in pursuance of the sentence or order, then, unless the Secretary of State⁵ otherwise directs, no account must be taken, in calculating the period for which he is liable to be so detained, of any time during which he is absent from the place in which he is required in accordance with law to be detained⁶. However, this does not apply to any period during which any such person as aforesaid is detained in pursuance of the sentence or order or in pursuance of any other sentence of any court in the United Kingdom in a prison, remand centre, young offenders institution or secure training centre⁷. These provisions⁸ apply to a person who is detained in custody in default of payment of any sum of money as if he were sentenced to imprisonment⁹.

For the purposes of these provisions a person who, after being temporarily released¹⁰, is at large at any time during the period for which he is liable to be detained in pursuance of his sentence is to be deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made by the Secretary of State¹¹.

A person who has been temporarily released¹² is guilty of an offence if (1) without reasonable excuse, he remains unlawfully at large¹³ at any time after becoming so at large by virtue of the expiry of the period for which he was temporarily released; or (2) knowing or believing an order recalling him to have been made and while unlawfully at large by virtue of such an order, he fails, without reasonable excuse, to take all necessary steps for complying as soon as reasonably practicable with that order¹⁴.

1 As to young offender institutions see PARA 643 et seq post.

2 As to secure training centres see PARA 657 et seq post.

3 As to remand centres see PARA 701-800 post.

4 Prison Act 1952 s 49(1) (amended by the Criminal Justice Act 1967 s 103(2), Sch 7 Pt I; the Criminal Justice Act 1982 s 77, Sch 14 para 8; the Criminal Justice and Public Order Act 1994 s 168(2), Sch 10 para 9; and by virtue of the Criminal Justice Act 1988 s 123, Sch 8 paras 1, 2). The Prison Act 1952 s 49(1) (as amended) is amended by the Crime and Disorder Act 1998 s 119, Sch 8 para 7(1) as from a day to be appointed by order under s 121(2). At the date at which this volume states the law no such order had been made.

5 As to the Secretary of State see PARA 505 ante.

6 Prison Act 1952 s 49(2) (amended by the Criminal Justice Act 1967 Sch 7 Pt I; the Children and Young Persons Act 1969 s 72(4), Sch 6; the Criminal Justice Act 1982 Sch 14 para 8; the Criminal Justice and Public Order Act 1994 Sch 10 para 9; and by virtue of the Criminal Justice Act 1988 Sch 8 paras 1, 2). The Prison Act 1952 s 49(2) is amended by the Crime and Disorder Act 1998 Sch 8 para 7(2)(a) as from a day to be appointed by order under s 121(2). At the date at which this volume states the law no such order had been made.

7 Prison Act 1952 s 49(2) proviso (a) (amended by the Criminal Justice Act 1961 s 30(4), 41(1), (3), Sch 4; the Criminal Justice Act 1982 Sch 14 para 8; the Criminal Justice and Public Order Act 1994 Sch 10 para 9). The

Prison Act 1952 s 49(2) proviso (a) is amended by the Crime and Disorder Act 1998 Sch 8 para 7(2)(b) as from a day to be appointed by order under s 121(2). At the date at which this volume states the law no such order had been made.

8 le the Prison Act 1952 s 49(2) (as amended): see s 49(3).

9 Ibid s 49(3).

10 le in pursuance of rules made under ibid s 47(5) (as amended) (see PARAS 502 ante, 612 post): see s 49(4) (as amended: see note 11 infra).

11 Ibid s 49(4) (amended by the Prison Commissioners Dissolution Order 1963, SI 1963/597, art 3(2), Sch 1). See also the Prisoners (Return to Custody) Act 1995; the text and notes 12-14 infra; and PARA 612 post.

12 See PARA 612 post.

13 A person is deemed for these purposes to be unlawfully at large whenever he is deemed to be so for the purposes of the Prison Act 1952 s 49 (as amended): Prisoners (Return to Custody) Act 1995 s 1(5).

14 Ibid s 1(1). See also PARA 612 post. Section 1 does not apply where the period of temporary release expired or the order of recall was made before 5 September 1995 (see ss 1(6), 3); nor does it apply in the case of a person temporarily released from a secure training centre (s 1(2)). An offence under s 1 is taken to be committed at the place where the offender was required to be detained immediately before being temporarily released: s 1(4). A person guilty of any offence under s 1 is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both: s 1(3). As to the standard scale see PARA 517 note 4 ante.

UPDATE

540 Prisoners unlawfully at large

TEXT AND NOTES 4-7--1952 Act s 49(1), (2) further amended: Offender Management Act 2007 Sch 3 para 11.

NOTES 4-7--Day now appointed: SI 1999/3426.

NOTE 4--See *R (on the application of S) v Secretary of State for the Home Department* [2003] EWCA Civ 426, [2003] All ER (D) 297 (Apr). Criminal Justice Act 1988 s 123 amended: Statute Law (Repeals) Act 2008.

NOTE 6--Where an order of the court mistakenly classifies a prisoner as a short-term rather than long-term prisoner, he is not unlawfully at large during a period spent out of custody which he would not have received had the order been correct: *R (on the application of Lunn) v Governor of HM Prison Moorland* [2006] EWCA Civ 700, [2006] 1 WLR 2870.

NOTE 13--See *R v Golding* [2007] EWCA Crim 118, [2007] 2 Cr App Rep (S) 309 (prisoner not within scope of 1995 Act as absconded after returning to custody).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(1) CLASSIFICATION AND CUSTODY/541. Purpose of imprisonment.

541. Purpose of imprisonment.

The Prison Rules¹ provide that the purpose of the training and treatment of convicted prisoners² is to encourage and assist them to lead a good and useful life³. At all times the treatment of prisoners must be such as to encourage their self-respect and a sense of personal responsibility, but they may not be employed in any disciplinary capacity⁴. In the control of prisoners, prison officers must seek to influence prisoners through their own example and leadership, and to enlist their willing co-operation⁵.

1 Ie the Prison Rules 1999, SI 1999/728.

2 For the meaning of 'convicted prisoner' see PARA 536 note 2 ante.

3 Prison Rules 1999, SI 1999/728, r 3. The Committee of Inquiry into the United Kingdom Prison Services, October 1979 (Cmnd 7673) recommended that the 'treatment' model should be replaced by the concept of 'positive custody': see PARAS 4.21-4.28 pp 66-67. The recommendation was rejected.

4 Prison Rules 1999, SI 1999/728, r 6(3).

5 See *ibid* r 6(2); and PARA 516 ante.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(1) CLASSIFICATION AND CUSTODY/542. Initial confinement and reception.

542. Initial confinement and reception.

A prisoner, whether sentenced to imprisonment or committed to prison on remand or pending trial or otherwise, may be lawfully confined in any prison¹. Prisoners are committed to such prisons as the Secretary of State may from time to time direct², but they are never liable to pay the cost of conveyance to prison³. A writ, warrant or other legal instrument addressed to the governor of a prison which identifies that prison by its situation or any other sufficient description is not invalidated merely because it is usually known by a different description⁴.

Every prisoner must be searched when taken into custody by an officer, on his reception into a prison, and subsequently as the governor thinks necessary or as the Secretary of State may direct⁵.

A personal record of each prisoner must be prepared and maintained in such manner as the Secretary of State directs⁶. The prisoner may be photographed on reception, and later, but no copy is to be supplied to any unauthorised person⁷.

The prisoner's personal effects, other than cash, which he is not allowed to retain, must be kept in the governor's custody and listed in an inventory to be signed by the prisoner after he has had a proper opportunity to see that it is correct⁸.

1 Prison Act 1952 s 12(1). 'Prison' does not include a naval, military or air force prison: s 53(1). A decision to confine a prisoner in any prison or to remove him to any other prison is susceptible to judicial review but the court will rarely intervene where operational or security reasons are engaged and the Secretary of State has taken into account the effect of location or transfer on the prisoner's rights to, for example, visits by his lawyers, friends or family: *R v Secretary of State for the Home Department, ex p McAvoy* [1984] 3 All ER 417, [1984] 1 WLR 1408. A sentence of imprisonment justifies the fact of imprisonment and the Prison Act 1952 s 12(1) justifies the confinement of a prisoner in any prison, including a special control unit: *Williams v Home Office (No 2)* [1981] 1 All ER 1211; affd [1982] 2 All ER 564, CA. See also *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1992] 1 AC 58, sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733, HL. As to the temporary reception in civil custody of persons under military or air force escort see the Army Act 1955 s 202; the Air Force Act 1955 s 202; and PARA 638 post. As to naval, military and air force prisons see ARMED FORCES.

2 Prison Act 1952 s 12(2). As to the Secretary of State see PARA 505 ante.

3 See *ibid* s 21; and PARA 510 ante.

4 See *ibid* s 12(3). In relation to a contracted-out prison, the reference to the governor is to be construed as a reference to the director: Criminal Justice Act 1991 s 87(1), (4).

5 See the Prison Rules 1999, SI 1999/728, r 41(1); and PARA 590 post.

6 *Ibid* r 42(1). This record includes the name, age, height, weight and particular marks: Prison Service Standing Order 1A 10(c). As to the recording of a prisoner's religion on reception see PARA 585 post.

7 See the Prison Rules 1999, SI 1999/728, r 42(2). As to photographing see further PARA 543 post.

8 See *ibid* r 43(2); and PARA 567 post.

UPDATE

542 Initial confinement and reception

TEXT AND NOTE 6--'Personal record' may include personal information and biometric records (such as fingerprints or other physical measurements): SI 1999/728 r 42(2A) (added by SI 2005/869).

TEXT AND NOTE 7--Nor may any copy of any other personal record be supplied to any unauthorised person: SI 1999/728 r 42(2) (amended by SI 2005/869).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(1) CLASSIFICATION AND CUSTODY/543. Photographing and measuring.

543. Photographing and measuring.

The Secretary of State¹ may make regulations for the measuring and photographing of prisoners, and may prescribe when and how this is to be done, and the number of copies to be made, and to whom they are to be sent². A convicted prisoner may be photographed and measured at any time during his imprisonment³. He may be photographed full face and in profile, either in prison dress or the dress he wore at the time of his arrest or trial, or in any other dress suitable to his ostensible position or occupation⁴. In addition to the measurements of various parts of the body and the description of every scar and distinctive mark, fingerprints may be taken⁵. Special permission is required to photograph or measure unconvicted prisoners⁶. Where an untried prisoner who has not been previously convicted of crime has been photographed and measured under the regulations, then, in the event of his discharge by a magistrate or his acquittal upon trial, all photographs, fingerprints and records of measurements must be immediately destroyed or handed over to the prisoner⁷.

1 As to the Secretary of State see PARA 505 ante.

2 See the Prison Act 1952 s 16; and PARA 502 ante. The regulations in force are the Regulations dated 20 June 1896, SR & O 1896/762, which were continued in force by the Prison Act 1952 s 54(3). They have been applied to aliens liable to expulsion by the Regulations dated 22 February 1906, SR & O 1906/160, and to persons imprisoned for default of entering into a recognisance or finding sureties for keeping the peace or being of good behaviour by the Regulations dated 1 September 1913, SR & O 1913/987.

3 See the Regulations dated 20 June 1896, SR & O 1896/762, reg 1. See also PARA 542 text and note 7 ante.

4 See *ibid* reg 2.

5 See *ibid* reg 3.

6 See *ibid* reg 4.

7 See *ibid* reg 5.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(1) CLASSIFICATION AND CUSTODY/544. Cleanliness and medical examination.

544. Cleanliness and medical examination.

Every prisoner must be provided with toilet articles necessary for his health and cleanliness, which must be replaced as necessary¹. Every prisoner is required to wash at proper times, have a hot bath or shower on reception and subsequently at least once a week². A prisoner's hair must not be cut without his consent³.

A medical examination on reception is not obligatory under the Prison Act 1952 or the Prison Rules 1999 although it invariably takes place as a matter of administrative practice⁴.

1 Prison Rules 1999, SI 1999/728, r 28(1). As to medical care and health see PARAS 580-583 post.

2 Ibid r 28(2).

3 Ibid r 28(3).

4 The routine medical examination includes screening for a prisoner's risk of committing suicide in custody and his capacity for self-harm: see Instruction to Governors 1/1994; Instruction to Governors 79/1994.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(1) CLASSIFICATION AND CUSTODY/545. Testing of prisoners for drugs.

545. Testing of prisoners for drugs.

If an authorisation¹ is in force for the prison, any prison officer² may, at the prison, in accordance with prison rules³, require any prisoner who is confined in the prison to provide a sample of urine for the purpose of ascertaining whether he has any drug⁴ in his body⁵. If the authorisation so provides, the power conferred includes power to require a prisoner to provide a sample of any other description specified in the authorisation, not being an intimate sample⁶, whether instead of or in addition to a sample of urine⁷.

1 'Authorisation' means an authorisation by the governor: Prison Act 1952 s 16A(3) (s 16A added by the Criminal Justice and Public Order Act 1994 s 151(1)).

2 'Prison officer' includes a prisoner custody officer within the meaning of the Criminal Justice Act 1991 Pt IV (ss 80-92) (as amended) (see PARA 528 post): Prison Act 1952 s 16A(3) (as added: see note 1 supra).

3 'Prison rules' means rules under *ibid* s 47 (as amended) (see PARAS 501-502 ante): s 16A(3) (as added: see note 1 supra).

4 'Drug' means any drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1971 s 2(1), Sch 2 (as amended) (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 238): Prison Act 1952 s 16A(3) (as added: see note 1 supra).

5 *Ibid* s 16A(1) (as added: see note 1 supra). See also *R v Governor of Swaleside Prison, ex p Wynter* (1998) Times, 2 June, DC.

6 'Intimate sample' has the same meaning as in the Police and Criminal Evidence Act 1984 Pt V (ss 53-65) (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 1027): Prison Act 1952 s 16A(3) (as added: see note 1 supra).

7 *Ibid* s 16A(2) (as added: see note 1 supra).

UPDATE

545 Testing of prisoners for drugs

NOTE 5--As to random drug testing, see *R v Secretary of State for the Home Department, ex p Russell* (2000) Times, 31 August; and PARA 596.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(1) CLASSIFICATION AND CUSTODY/546. Power to test prisoners for alcohol.

546. Power to test prisoners for alcohol.

If an authorisation¹ is in force for the prison, any prison officer² may, at the prison, in accordance with prison rules³, require any prisoner who is confined in the prison to provide a sample of breath for the purpose of ascertaining whether he has alcohol in his body⁴. If the authorisation so provides, the power conferred includes power (1) to require a prisoner to provide a sample of urine, whether instead of or in addition to a sample of breath⁵; and (2) to require a prisoner to provide a sample of any other description specified in the authorisation, not being an intimate sample⁶, whether instead of or in addition to a sample of breath, a sample of urine or both⁷.

1 'Authorisation' means an authorisation by the governor: Prison Act 1952 s 16B(3) (s 16B added by the Prisons (Alcohol Testing) Act 1997 s 1).

2 'Prison officer' includes a prisoner custody officer within the meaning of the Criminal Justice Act 1991 Pt IV (ss 80-92) (as amended) (see PARA 528 post): Prison Act 1952 s 16B(3) (as added: see note 1 supra).

3 'Prison rules' means rules under *ibid* s 47 (as amended) (see PARAS 501-502 ante): s 16B(3) (as added: see note 1 supra).

4 *Ibid* s 16B(1) (as added: see note 1 supra).

5 *Ibid* s 16B(2)(a) (as added: see note 1 supra).

6 'Intimate sample' has the same meaning as in the Police and Criminal Evidence Act 1984 Pt V (ss 53-65) (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 1027): Prison Act 1952 s 16B(3) (as added: see note 1 supra).

7 *Ibid* s 16B(2)(b) (as added: see note 1 supra).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(1) CLASSIFICATION AND CUSTODY/547. Information to prisoners.

547. Information to prisoners.

Every prisoner must be provided, as soon as possible after his reception into prison, and in any case within 24 hours, with information in writing about those provisions of the Prison Rules 1999¹ and other matters which it is necessary he should know, including earnings and privileges, and the proper method of making requests and complaints². In the case of a prisoner aged less than 18, or a prisoner aged 18 or over who cannot read or appears to have difficulty in understanding the information so provided, the governor, or an officer deputed by him, must so explain it to him that he can understand his rights and obligations³. A copy of the Prison Rules 1999 must be made available to any prisoner who requests it⁴.

1 Ie the Prison Rules 1999, SI 1999/728.

2 Ibid r 10(1).

3 Ibid r 10(2).

4 Ibid r 10(3).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(2) TRANSFER OF PRISONERS WITHIN THE BRITISH ISLANDS/548. General transfer of prisoners.

(2) TRANSFER OF PRISONERS WITHIN THE BRITISH ISLANDS

548. General transfer of prisoners.

The Secretary of State¹ may, on the application of:

- 15 (1) a person remanded in custody² in any part of the United Kingdom³ in connection with an offence⁴; or
- 16 (2) a person serving a sentence of imprisonment⁵ in any part of the United Kingdom⁶,

make an order for his transfer to another part of the United Kingdom or to any of the Channel Islands⁷, there to be remanded in custody pending his trial for the offence or, as the case may be, to serve the whole or any part of the remainder of his sentence, and for his removal to an appropriate institution there⁸.

1 As to the Secretary of State see PARA 505 ante.

2 References in the Crime (Sentences) Act 1997 s 41, Sch 1 (as amended) to a person being remanded in custody are references to his being remanded in or committed to custody by an order of a court: Sch 1 para 20(2).

3 For the meaning of 'United Kingdom' see PARA 504 note 1 ante.

4 See the Crime (Sentences) Act 1997 Sch 1 para 1(1)(a).

5 'Sentence of imprisonment' includes any sentence of detention and a sentence of custody for life under the Criminal Justice Act 1982 s 8 (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 79), and cognate expressions must be construed accordingly: Crime (Sentences) Act 1997 s 54(1), Sch 1 para 20(1). In determining, in relation to any person serving a sentence of imprisonment, the time which is to be served in respect of an equivalent sentence treated as passed in another country or island, regard must be had, not only to any time already served by him, but also to:

- 1 (1) any periods for which he has been remanded in custody, being either (a) periods by which his sentence falls to be reduced; or (b) periods which have been directed to count as time served as part of his sentence (Sch 1 para 20(3)(a)); and

- 2 (2) any early release or additional days awarded to him (Sch 1 para 20(3)(b)).

6 See *ibid* Sch 1 para 1(1)(b).

7 Where (1) a person is remanded in custody in any of the Channel Islands in connection with an offence (see *ibid* Sch 1 para 1(2)(a)); or (2) a person has been sentenced to imprisonment in any of the Channel Islands (see Sch 1 para 1(2)(b)), then the Secretary of State may, without application in that behalf, make an order for his transfer to any part of the United Kingdom, there to be remanded in custody pending his trial for the offence or, as the case may be, to serve the whole or any part of his sentence or the remainder of his sentence, and for his removal to an appropriate institution there: Sch 1 para 1(2). For the meaning of 'appropriate institution' see note 8 *infra*.

8 *Ibid* Sch 1 para 1(1). 'Appropriate institution' (1) in relation to a person remanded in custody, means any prison or other institution (Sch 1 para 1(3)(a)); (2) in relation to a person sentenced to imprisonment, means any institution which would be appropriate for the detention of an offender of the same age serving an equivalent sentence passed by a court in the country or island to which he is transferred (Sch 1 para 1(3)(b)). The provision in head (2) *supra* has effect in relation to a person serving a sentence of a length which could not have been passed on an offender of his age by a court in the place to which he has been transferred as if it defined 'appropriate institution' as meaning such place as the Secretary of State may direct: Sch 1 para 1(4).

'Prison', unless the context otherwise requires, includes a young offender institution, a young offenders institution, a young offenders centre and a remand centre: Sch 1 para 20(1).

UPDATE

548 General transfer of prisoners

NOTE 5--Definition of 'sentence of imprisonment' amended: Armed Forces Act 2006 Sch 16 para 145.

NOTE 8--Definition of 'prison' in 1997 Act Sch 1 para 20(1) amended: Offender Management Act 2007 Sch 3 para 15(3).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(2) TRANSFER OF PRISONERS WITHIN THE BRITISH ISLANDS/549. Transfer of prisoners for trial.

549. Transfer of prisoners for trial.

If it appears to the Secretary of State¹ that:

- 17 (1) a person remanded in custody² in any part of the United Kingdom³ in connection with an offence⁴; or
- 18 (2) a person serving a sentence of imprisonment⁵ in any part of the United Kingdom⁶,

should be transferred to another part of the United Kingdom or to any of the Channel Islands⁷ for the purpose of attending criminal proceedings against him there, the Secretary of State may make an order for his transfer to that other part or that island and for his removal to a prison or other institution there⁸.

Where a person remanded in custody has been transferred under these provisions for the purpose of any proceedings, the Secretary of State may, if that person is not sentenced to imprisonment in those proceedings, make an order for his return to the country or island from which he was transferred⁹. Where a person serving a sentence of imprisonment has been transferred under these provisions for the purpose of any proceedings, the Secretary of State may:

- 19 (a) if that person is sentenced to imprisonment in those proceedings, make an order¹⁰ transferring him back to the country or island from which he was transferred¹¹;
- 20 (b) if he is not so sentenced, make an order for his return to the said country or island, there to serve the remainder of his sentence¹².

1 As to the Secretary of State see PARA 505 ante.

2 See PARA 548 note 2 ante.

3 For the meaning of 'United Kingdom' see PARA 504 note 1 ante.

4 See the Crime (Sentences) Act 1997 s 41, Sch 1 para 2(1)(a).

5 For the meaning of 'sentence of imprisonment' see PARA 548 note 5 ante.

6 See the Crime (Sentences) Act 1997 Sch 1 para 2(1)(b).

7 If it appears to the Secretary of State that:

3 (1) a person remanded in custody in any of the Channel Islands in connection with an offence (see *ibid* Sch 1 para 2(2)(a)); or

4 (2) a person serving a sentence of imprisonment in any of the Channel Islands (see Sch 1 para 2(2)(b)),

should be transferred to a part of the United Kingdom for the purpose of attending criminal proceedings against him there, the Secretary of State may make an order for his transfer to that part and for his removal to a prison or other institution there: Crime (Sentences) Act 1997 s 41, Sch 1 para 2(2). For the meaning of 'prison' see PARA 548 note 8 ante.

8 *Ibid* Sch 1 para 2(1).

9 See *ibid* Sch 1 para 2(3).

10 See under *ibid* Sch 1 para 1(1)(b) or Sch 1 para 1(2)(b) (see PARA 548 ante) (but without application in that behalf): see Sch 1 para 2(4)(a).

11 See *ibid* Sch 1 para 2(4)(a).

12 See *ibid* Sch 1 para 2(4)(b).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(2) TRANSFER OF PRISONERS WITHIN THE BRITISH ISLANDS/550. Transfer of prisoners for other judicial purposes.

550. Transfer of prisoners for other judicial purposes.

If the Secretary of State¹ is satisfied, in the case of:

- 21 (1) a person remanded in custody² in any part of the United Kingdom³ in connection with an offence⁴;
- 22 (2) a person serving a sentence of imprisonment⁵ in any part of the United Kingdom⁶; or
- 23 (3) a person not falling within head (1) or (2) above who is detained in a prison⁷ in any part of the United Kingdom⁸,

that the attendance of that person at any place in that or any other part of the United Kingdom or in any of the Channel Islands⁹ is desirable in the interests of justice or for the purposes of any public inquiry, the Secretary of State may direct that person to be taken to that place¹⁰.

Where any person is directed to be taken to any place under these provisions, he must, unless the Secretary of State otherwise directs, be kept in custody while being so taken, while at that place, and while being taken back to the prison or other institution or place in which he is required in accordance with law to be detained¹¹.

1 As to the Secretary of State see PARA 505 ante.

2 See PARA 548 note 2 ante.

3 For the meaning of 'United Kingdom' see PARA 504 note 1 ante.

4 See the Crime (Sentences) Act 1997 s 41, Sch 1 para 3(1)(a).

5 For the meaning of 'sentence of imprisonment' see PARA 548 note 5 ante.

6 See the Crime (Sentences) Act 1997 Sch 1 para 3(1)(b).

7 For the meaning of 'prison' see PARA 548 note 8 ante.

8 See the Crime (Sentences) Act 1997 Sch 1 para 3(1)(c).

9 If the Secretary of State is satisfied, in the case of:

5 (1) a person remanded in custody in any of the Channel Islands in connection with an offence (see *ibid* Sch 1 para 3(2)(a));

6 (2) a person serving a sentence of imprisonment in any of the Islands (see Sch 1 para 3(2)(b)); or

7 (3) a person not falling within head (1) or (2) *supra* who is detained in a prison in any of the Channel Islands (see Sch 1 para 3(2)(c)),

that the attendance of that person at any place in the United Kingdom is desirable in the interests of justice or for the purposes of any public inquiry, the Secretary of State may direct that person to be taken to that place: Sch 1 para 3(2).

10 *Ibid* Sch 1 para 3(1).

11 *Ibid* Sch 1 para 3(3).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(2) TRANSFER OF PRISONERS WITHIN THE BRITISH ISLANDS/551. Transfer of supervision of released prisoners.

551. Transfer of supervision of released prisoners.

The Secretary of State¹ may, on the application of a person undergoing or about to undergo supervision² in any part of the United Kingdom³, make an order for the transfer of his supervision to another part of the United Kingdom or to any of the Channel Islands⁴, that is to say, an order:

- 24 (1) for his supervision or, as the case may be, the remainder of his supervision to be undergone in that country or island⁵; and
- 25 (2) for responsibility for his supervision to be transferred to an appropriate person there⁶.

1 As to the Secretary of State see PARA 505 ante.

2 'Supervision' means supervision in pursuance of an order made for the purpose or, in the case of a person released from prison on licence, in pursuance of a condition contained in his licence: Crime (Sentences) Act 1997 s 41, Sch 1 para 20(1). As from a day to be appointed this definition is amended to include supervision in pursuance of a detention and training order. At the date at which this volume states the law no such day had been appointed. For the meaning of 'prison' see PARA 548 note 8 ante.

3 For the meaning of 'United Kingdom' see PARA 504 note 1 ante.

4 The Secretary of State may, on the application of a person undergoing or about to undergo supervision in any of the Channel Islands, make an order for the transfer of his supervision to any part of the United Kingdom, that is to say, an order:

- 8 (1) for his supervision or, as the case may be, the remainder of his supervision to be undergone in that country (Crime (Sentences) Act 1997 Sch 1 para 4(2)(a)); and
- 9 (2) for responsibility for his supervision to be transferred to an appropriate person there (Sch 1 para 4(2)(b)).

5 Ibid Sch 1 para 4(1)(a).

6 Ibid Sch 1 para 4(1)(b).

UPDATE

551 Transfer of supervision of released prisoners

NOTE 2--Day appointed for amendment, by Crime and Disorder Act 1998 Sch 8 para 135(10), of 'supervision': SI 1999/3426.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(2) TRANSFER OF PRISONERS WITHIN THE BRITISH ISLANDS/552. Conditions of transfer.

552. Conditions of transfer.

A transfer¹ has effect subject to such conditions (if any) as the Secretary of State² may think fit to impose³. A condition so imposed may be varied or removed at any time⁴.

1 le under the Crime (Sentences) Act 1997 s 41, Sch 1 Pt I (see PARAS 548-551 ante).

2 As to the Secretary of State see PARA 505 ante.

3 Crime (Sentences) Act 1997 Sch 1 para 5(1).

4 Ibid Sch 1 para 5(2). Such a condition as is mentioned in Sch 1 para 6(1)(a) (see PARA 553 post) must not be varied or removed except with the consent of the person to whom the transfer relates: Sch 1 para 5(3).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(2) TRANSFER OF PRISONERS WITHIN THE BRITISH ISLANDS/553. Restricted transfers.

553. Restricted transfers.

A transfer¹ is a restricted transfer if it is subject to a condition that the person to whom it relates is to be treated for certain purposes² as if he were still subject to the provisions applicable for those purposes under the law of the place from which the transfer is made³; and is an unrestricted transfer if it is not so subject⁴.

Where (1) a person's transfer⁵; or (2) a transfer of a person's supervision⁶, is a restricted transfer, that person or, as the case may be, his supervision may by order be transferred back to the country or island from which he or it was transferred⁷.

Where a person's transfer⁸ is a restricted transfer, that person must while in the country or territory to which he is transferred be kept in custody except in so far as the Secretary of State⁹ may in any case or class of case otherwise direct¹⁰.

Restricted transfers may be made between different parts of the British Islands, and different provisions apply accordingly¹¹.

1 Ie under the Crime (Sentences) Act 1997 s 41, Sch 1 Pt I (see PARAS 548-551 ante).

2 The relevant purposes are:

- 10 (1) in relation to the transfer of a person under *ibid* Sch 1 para 1(1)(a) or Sch 1 para 1(2)(a) (see PARA 548 ante), Sch 1 para 2(1)(a) or Sch 1 para 2(2)(a) (see PARA 549 ante) or Sch 1 para 3(1)(a) or Sch 1 para 3(2)(a) (see PARA 550 ante), the purposes of his remand in custody and, where applicable, the purposes of his detention under and release from any sentence of imprisonment that may be imposed (Sch 1 para 6(2)(a));
- 11 (2) in relation to the transfer of a person under Sch 1 para 1(1)(b) or Sch 1 para 1(2)(b) (see PARA 548 ante), Sch 1 para 2(1)(b) or Sch 1 para 2(2)(b) (see PARA 549 ante) or Sch 1 para 3(1)(b) or Sch 1 para 3(2)(b) (see PARA 550 ante), the purposes of his detention under and release from his sentence and, where applicable, the purposes of his supervision and possible recall following his release (Sch 1 para 6(2)(b)); and
- 12 (3) in relation to the transfer of a person's supervision under Sch 1 para 4(1) or Sch 1 para 4(2) (see PARA 551 ante), the purposes of his supervision and possible recall (Sch 1 para 6(2)(c)).

'Recall' means (a) in relation to a person who is supervised in pursuance of an order made for the purpose, being sentenced to imprisonment, or being recalled to prison, for a breach of any condition of the order (Sch 1 para 6(3)(a)); (b) in relation to a person who is supervised in pursuance of a condition contained in a licence, being recalled or returned to prison, whether for a breach of any condition of the licence or otherwise (Sch 1 para 6(3)(b) (amended by the Crime and Disorder Act 1998 s 119, Sch 8 para 135(1), (2)(b))). As to remand in custody see PARA 548 note 2 ante. For the meaning of 'sentence of imprisonment' see PARA 548 note 5 ante. For the meaning of 'prison' see PARA 548 note 8 ante.

3 Crime (Sentences) Act 1997 Sch 1 para 6(1)(a).

4 Ibid Sch 1 para 6(1)(b). Where a transfer under Sch 1 Pt I (see PARAS 548-552 ante) ceases to be a restricted transfer at any time by reason of the removal of such a condition as is mentioned in Sch 1 para 6(1)(a) (see the text and note 3 supra), the provisions of Sch 1 para 15 (see PARA 554 post) apply as if the transfer were an unrestricted transfer and had been effected at that time: Sch 1 para 16.

5 Ie under *ibid* Sch 1 para 1 (see PARA 548 ante), Sch 1 para 2 (see PARA 549 ante) or Sch 1 para 3 (see PARA 550 ante): see Sch 1 para 7(1)(a).

6 Ie under *ibid* Sch 1 para 4 (see PARA 551 ante): see Sch 1 para 7(1)(b). For the meaning of 'supervision' see PARA 551 note 2 ante.

7 Ibid Sch 1 para 7(1).

8 le under ibid Sch 1 para 1 (see PARA 548 ante) or Sch 1 para 2 (see PARA 549 ante): see Sch 1 para 7(2).

9 As to the Secretary of State see PARA 505 ante.

10 Crime (Sentences) Act 1997 Sch 1 para 7(2).

11 As to restricted transfers from England and Wales to Scotland see ibid Sch 1 para 8 (amended by the Crime and Disorder Act 1998 Sch 8 para 135(1), (3)). As to restricted transfers from England and Wales to Northern Ireland see the Crime (Sentences) Act 1997 Sch 1 para 9 (amended by the Crime and Disorder Act 1998 Sch 8 para 135(1), (4)). As to restricted transfers from Scotland to England and Wales see the Crime (Sentences) Act 1997 Sch 1 para 10 (amended by the Crime and Disorder Act 1998 Sch 8 para 135(1), (5)). As to restricted transfers from Scotland to Northern Ireland see the Crime (Sentences) Act 1997 Sch 1 para 11 (amended by the Crime and Disorder Act 1998 Sch 8 para 135(1), (6)). As to restricted transfers from Northern Ireland to England and Wales see the Crime (Sentences) Act 1997 Sch 1 para 12 (amended by the Crime and Disorder Act 1998 Sch 8 para 135(1), (7)). As to restricted transfers from Northern Ireland to Scotland see the Crime (Sentences) Act 1997 Sch 1 para 13 (amended by the Crime and Disorder Act 1998 Sch 8 para 135(1), (8)). As to restricted transfers between the United Kingdom and the Channel Islands see the Crime (Sentences) Act 1997 Sch 1 para 14.

UPDATE

553 Restricted transfers

NOTE 11--1997 Act Sch 1 para 8 further amended: Domestic Violence, Crime and Victims Act 2004 Sch 10 para 46; Offender Management Act 2007 Sch 3 para 15(2); Criminal Justice and Immigration Act 2008 Sch 26 para 32; SI 2008/912. 1997 Act Sch 1 para 9 amended: Domestic Violence, Crime and Victims Act 2004 Sch 10 para 46; Children Act 2004 Sch 5 Pt 4; Criminal Justice and Immigration Act 2008 Sch 26 para 32. 1997 Act Sch 1 para 11 further amended: SI 2008/912.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(2) TRANSFER OF PRISONERS WITHIN THE BRITISH ISLANDS/554. Unrestricted transfers.

554. Unrestricted transfers.

Where the transfer to any part of the United Kingdom¹ or to any of the Channel Islands of a person remanded in custody² is an unrestricted transfer³, he must be treated for certain purposes⁴ as if he had been remanded⁵ for an offence committed in the place to which he is transferred⁶.

Where the transfer to any part of the United Kingdom or to any of the Channel Islands of a person serving a sentence of imprisonment⁷ is an unrestricted transfer, he must be treated for certain purposes⁸ as if his sentence had been an equivalent sentence passed by a court in the place to which he is transferred⁹. A person who has been sentenced to a sentence of a length which could not have been passed on an offender of his age in the place to which he has been transferred must be treated for the purposes mentioned above as the Secretary of State may direct¹⁰.

Where a transfer of a person's supervision¹¹ to any part of the United Kingdom or to any of the Channel Islands is an unrestricted transfer:

- 26 (1) that person must be treated for certain purposes¹² as if his period of supervision had been an equivalent period of supervision directed to be undergone in the place to which he is transferred¹³; and
- 27 (2) any functions of the Secretary of State under any provision of the law of that place which applies for those purposes is exercisable in relation to that person by any person appointed by the Secretary of State for the purpose¹⁴.

1 For the meaning of 'United Kingdom' see PARA 504 note 1 ante.

2 I.e. under the Crime (Sentences) Act 1997 s 41, Sch 1 para 1(1)(a) or Sch 1 para 1(2)(a) (see PARA 548 ante), Sch 1 para 2(1)(a) or Sch 1 para 2(2)(a) (see PARA 549 ante), or Sch 1 para 3(1)(a) or Sch 1 para 3(2)(a) (see PARA 550 ante): see Sch 1 para 15(1).

3 For the meaning of 'unrestricted transfer' see PARA 553 ante.

4 As to the relevant purposes see PARA 553 note 2 ante. Where the relevant purposes in relation to a transfer to Scotland which is an unrestricted transfer include supervision, the person to whom the transfer relates must be treated as if a supervised release order had been made in respect of him by such court as the Secretary of State may specify: Crime (Sentences) Act 1997 Sch 1 para 15(5). As to the Secretary of State see PARA 505 ante.

5 See PARA 548 note 2 ante.

6 Crime (Sentences) Act 1997 Sch 1 para 15(1).

7 I.e. under *ibid* Sch 1 para 1(1)(b) or Sch 1 para 1(2)(b) (see PARA 548 ante), Sch 1 para 2(1)(b) or Sch 1 para 2(2)(b) (see PARA 549 ante) or Sch 1 para 3(1)(b) or Sch 1 para 3(2)(b) (see PARA 550 ante): see Sch 1 para 15(2). For the meaning of 'sentence of imprisonment' see PARA 548 note 5 ante.

8 See note 4 *supra*.

9 Crime (Sentences) Act 1997 Sch 1 para 15(2).

10 *Ibid* Sch 1 para 15(3).

11 I.e. under *ibid* Sch 1 para 4(1) or Sch 1 para 4(2) (see PARA 551 ante): see Sch 1 para 15(4). For the meaning of 'supervision' see PARA 551 note 2 ante.

- 12 See note 4 *supra*.
- 13 Crime (Sentences) Act 1997 Sch 1 para 15(4)(a).
- 14 *Ibid* Sch 1 para 15(4)(b).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(3) REPATRIATION OF PRISONERS/555. Issue of warrant for transfer.

(3) REPATRIATION OF PRISONERS

555. Issue of warrant for transfer.

Where:

- 28 (1) the United Kingdom¹ is a party to international arrangements² providing for the transfer between the United Kingdom and a country or territory outside the British Islands of certain specified persons³; and
- 29 (2) the Secretary of State⁴ and the appropriate authority of that country or territory have each agreed to the transfer under those arrangements of a particular person ('the prisoner')⁵; and
- 30 (3) the prisoner has consented to being transferred in accordance with those arrangements⁶,

the Secretary of State must issue a warrant providing for the transfer of the prisoner into or out of the United Kingdom⁷.

The Secretary of State must not issue a warrant, and, if he has issued one, must revoke it, in any case where after the duty mentioned above has arisen and before the transfer in question takes place circumstances arise, or are brought to the Secretary of State's attention, which in his opinion make it inappropriate that the transfer should take place⁸.

The Secretary of State must not issue a warrant providing for the transfer of any person into the United Kingdom⁹ unless:

- 31 (a) that person is a British citizen¹⁰; or
- 32 (b) the transfer appears to the Secretary of State to be appropriate having regard to any close ties which that person has with the United Kingdom¹¹; or
- 33 (c) it appears to the Secretary of State that the transfer is a transfer for the purpose of the temporary return¹² of the prisoner to the United Kingdom¹³.

The Secretary of State must not issue a warrant, other than one superseding an earlier warrant, unless he is satisfied that all reasonable steps have been taken to inform the prisoner in writing in his own language¹⁴:

- 34 (i) of the substance, so far as relevant to the prisoner's case, of the international arrangements in accordance with which it is proposed to transfer him¹⁵;
- 35 (ii) of the effect in relation to the prisoner of the warrant which it is proposed to issue in respect of him under the Repatriation of Prisoners Act 1984¹⁶;
- 36 (iii) in the case of a transfer into the United Kingdom, of the effect in relation to the prisoner of the law relating to his detention under that warrant (including the effect of any enactment or instrument under which he may be released earlier than provided for by the terms of the warrant)¹⁷;
- 37 (iv) in the case of a transfer out of the United Kingdom, of the effect in relation to the prisoner of so much of the law of the country or territory to which he is to be transferred as has effect with respect to transfers under those arrangements¹⁸; and
- 38 (v) of certain specified powers of the Secretary of State¹⁹.

The Secretary of State must not issue a warrant superseding an earlier warrant unless these requirements were fulfilled in relation to the earlier warrant²⁰.

The Secretary of State must not issue a warrant unless he is satisfied that the consent given for the purposes of head (3) above was given in a manner authorised by the international arrangements in accordance with which the prisoner is to be transferred and was so given either by the prisoner himself, or, in circumstances where it appears to the Secretary of State inappropriate by reason of the physical or mental condition or the youth of the prisoner for the prisoner to act for himself, by a person appearing to the Secretary of State to be an appropriate person to have acted on the prisoner's behalf²¹.

1 For the meaning of 'United Kingdom' see PARA 504 note 1 ante.

2 'International arrangements' includes any arrangements between the United Kingdom and a colony: Repatriation of Prisoners Act 1984 s 8(1). International arrangements have been made: see the Convention on the Transfer of Sentenced Persons (Strasbourg, 21 March 1983; TS 51 (1985); Cmnd 9617), ratified by the United Kingdom on 1 August 1985.

3 See the Repatriation of Prisoners Act 1984 s 1(1)(a). The persons specified are persons to whom s 1(7) applies: see s 1(1)(a). Section 1(7) applies to a person if he is for the time being required to be detained in a prison, a hospital or any other institution either:

13 (1) by virtue of an order made in the course of the exercise by a court or tribunal in the United Kingdom, or in any country or territory outside the British Islands, of its criminal jurisdiction (s 1(7)(a)); or

14 (2) under the provisions of the Repatriation of Prisoners Act 1984 or any similar provisions of the law of any part of the United Kingdom or of the law of any country or territory outside the British Islands (s 1(7)(b)).

The reference in head (2) supra to provisions similar to the provisions of the Repatriation of Prisoners Act 1984 is to be construed as a reference to any provisions which have effect with respect to the transfer between different countries and territories (or different parts of a country or territory) of persons who are required to be detained in prisons, hospitals or other institutions by virtue of orders made in the course of the exercise by courts and tribunals of their criminal jurisdiction: s 1(8). 'Order' includes any sentence, direction, warrant or other means of giving effect to the decision of a court or tribunal: s 8(1). A reference to criminal jurisdiction, in relation to a court or tribunal in a country or territory outside the British Islands, includes a reference to any jurisdiction which would be a criminal jurisdiction but for the age or incapacity of the persons in respect of whom it is exercised: s 8(2).

4 As to the Secretary of State see PARA 505 ante.

5 See the Repatriation of Prisoners Act 1984 s 1(1)(b).

6 See *ibid* s 1(1)(c). A consent given for the purposes of head (3) in the text is not capable of being withdrawn after a warrant has been issued in respect of the prisoner: s 1(6). Accordingly, a purported withdrawal of that consent after that time does not affect the validity of the warrant, or of any provision which by virtue of s 6 (see PARA 560 post) subsequently supersedes provisions of that warrant, or of any direction given in relation to the prisoner under s 2(3) (see PARA 556 post): s 1(6).

7 *Ibid* s 1(1). In any proceedings, the certificate of the Secretary of State:

15 (1) that a particular country or territory is a party to any such international arrangements as are mentioned in head (1) in the text (see s 8(3)(a));

16 (2) that the appropriate authority of a country or territory which is such a party has agreed to the transfer of a particular person in accordance with any such arrangements (see s 8(3)(b)); or

17 (3) that, for the purposes of any provision of the Repatriation of Prisoners Act 1984, a particular person is or represents the appropriate authority of any country or territory (see s 8(3)(c)),

is conclusive of the matter certified: s 8(3).

8 *Ibid* s 1(2).

- 9 Ibid s 1(3).
- 10 Ibid s 1(3)(a).
- 11 Ibid s 1(3)(b).
- 12 Is such a transfer as is provided for by virtue of ibid s 4(1)(b) (see PARA 558 post): see s 1(3)(c).
- 13 Ibid s 1(3)(c).
- 14 Ibid s 1(4).
- 15 Ibid s 1(4)(a).
- 16 Ibid s 1(4)(b).
- 17 Ibid s 1(4)(c).
- 18 Ibid s 1(4)(d).
- 19 Ibid s 1(4)(e). The powers specified are those under s 6 (see PARA 560 post): see s 1(4)(e).
- 20 Ibid s 1(4).
- 21 Ibid s 1(5)(a), (b).

UPDATE

555-561 Repatriation of Prisoners

See further Repatriation of Prisoners Act 1984 s 4A (ss 4A-4C added by Criminal Justice and Immigration Act 2008 s 94) which provides for a relevant Minister to issue a warrant transferring responsibility for the continued enforcement of a sentence to the United Kingdom, or from the United Kingdom to another State, where the sentenced person has escaped or absconded from lawful custody and fled to another country. The 1984 Act s 4B provides that the effect of a warrant under s 4A issued in respect of a person who has fled from the United Kingdom is to transfer responsibility for the detention of a person and the continued enforcement of the sentence from the relevant Minister to the authorities of the country or territory in which the person is present. The 1984 Act s 4C provides that the effect of a warrant under s 4A issued in respect of a person who has fled to the United Kingdom is to authorise the taking into custody and the detention of the relevant person in the United Kingdom in accordance with the provisions of that warrant.

See also 1984 Act ss 4D-4F (added by Criminal Justice and Immigration Act 2008 s 95) (persons believed to fall within the 1984 Act s 4A(3): powers of arrest and detention).

555 Issue of warrant for transfer

TEXT AND NOTES--1984 Act s 1 further amended, s 8 amended: Criminal Justice and Immigration Act 2008 Sch 26 paras 11, 18, Sch 28 Pt 6.

NOTE 2--See also Additional Protocol to the Convention on the Transfer of Sentenced Persons (Strasbourg, 18 December 1997; Cm 7565), not yet ratified by the United Kingdom.

NOTE 3--In the Repatriation of Prisoners Act 1984 s 1(7)(a) the reference to an order made by a court or tribunal in the United Kingdom in the course of the exercise of its criminal jurisdiction includes an order made (anywhere) by the Court Martial, the Service Civilian Court, the Court Martial Appeal Court, or the Supreme Court on an

appeal brought from the Court Martial Appeal Court: s 1(7A) (added by the Armed Forces Act 2006 Sch 16 para 98).

TEXT AND NOTE 6--Now, head (3) in a case in which the terms of those arrangements provide for the prisoner to be transferred only with his consent, the prisoner's consent has been given: 1984 Act s 1(1)(c) (substituted by Police and Justice Act 2006 s 44(2)).

TEXT AND NOTE 21--For 'The Secretary of State ... was given' read 'In such a case as is referred to in head (3), the relevant minister must not issue a warrant under the 1984 Act unless he is satisfied that the prisoner's consent was given': s 1(5) (amended by 2006 Act s 44(3)).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(3) REPATRIATION OF PRISONERS/556. Transfer out of the United Kingdom.

556. Transfer out of the United Kingdom.

The effect of a warrant providing for the transfer of the prisoner¹ out of the United Kingdom² is to authorise:

- 39 (1) the taking of the prisoner to any place in any part of the United Kingdom and his delivery, at a place of departure from the United Kingdom, into the custody of a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred³; and
- 40 (2) the removal of the prisoner by the person to whom he is so delivered to a place outside the United Kingdom⁴.

The order by virtue of which the prisoner is required to be detained⁵ at the time such a warrant is issued in respect of him continues to have effect after his removal from the United Kingdom so as to apply to him if he is again in the United Kingdom at any time when under that order he is to be, or may be, detained⁶. If, at any time after the removal of the prisoner from the United Kingdom, it appears to the Secretary of State⁷ appropriate to do so in order that effect may be given to the international arrangements⁸ in accordance with which the prisoner was transferred, the Secretary of State may give a direction varying the order or providing for the order to cease to have effect⁹.

1 For the meaning of 'the prisoner' see PARA 555 text to note 5 ante.

2 For the meaning of 'United Kingdom' see PARA 504 note 1 ante.

3 Repatriation of Prisoners Act 1984 s 2(1)(a).

4 Ibid s 2(1)(b).

5 References in ibid s 2 (as amended) to the order by virtue of which the prisoner is required to be detained at the time a warrant under the Repatriation of Prisoners Act 1984 is issued in respect of him include references to any order by virtue of which he is required to be detained after the order by virtue of which he is required to be detained at that time ceases to have effect: s 2(7). For the meaning of 'order' see PARA 555 note 3 ante.

6 Ibid s 2(2). Except in relation to any period during which a restriction order is in force in respect of the prisoner, s 2(2) does not apply in relation to a hospital order; and, accordingly, a hospital order ceases to have effect in relation to the prisoner:

18 (1) at the time of his removal from the United Kingdom if no restriction order is in force in respect of him at that time (s 2(5)(a)); and

19 (2) if at that time a restriction order is in force in respect of him, as soon after his removal as the restriction order ceases to have effect (s 2(5)(b)).

'Hospital order' means an order made under the Mental Health Act 1983 s 37 (as amended) (see MENTAL HEALTH vol 30(2) (Reissue) PARA 486 et seq), the Criminal Procedure (Scotland) Act 1975 s 175 or s 376 (repealed and replaced by provisions of the Criminal Procedure (Scotland) Act 1995) or the Mental Health (Northern Ireland) Order 1986, SI 1986/595 (NI 4), art 44 or any order or direction made under another enactment but having the same effect as an order made under one of those provisions: Repatriation of Prisoners Act 1984 s 2(6) (amended by the Mental Health (Northern Ireland) Consequential Amendments) Order 1986, SI 1986/596, art 9(a)). 'Restriction order' means an order made under the Mental Health Act 1983 s 41 (as amended) (see MENTAL HEALTH vol 30(2) (Reissue) PARA 496 et seq), the Criminal Procedure (Scotland) Act 1975 s 178 or s 379 (repealed and replaced by provisions of the Criminal Procedure (Scotland) Act 1995) or the Mental Health (Northern Ireland) Order 1986, SI 1986/595 (NI 4), art 47 or any order or direction made under another enactment but

having the same effect as an order made under one of those provisions: Repatriation of Prisoners Act 1984 s 2(6) (as so amended).

7 As to the Secretary of State see PARA 505 ante.

8 For the meaning of 'international arrangements' see PARA 555 note 2 ante.

9 Repatriation of Prisoners Act 1984 s 2(3). As to the power to vary see further s 2(4) (amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 s 47(1), Sch 5 para 3(1), (2); the Crime and Punishment (Scotland) Act 1997 s 62(1), Sch 1 para 10(1), (2); and the Crime and Disorder Act 1998 s 119, Sch 8 para 56).

UPDATE

555-561 Repatriation of Prisoners

See further Repatriation of Prisoners Act 1984 s 4A (ss 4A-4C added by Criminal Justice and Immigration Act 2008 s 94) which provides for a relevant Minister to issue a warrant transferring responsibility for the continued enforcement of a sentence to the United Kingdom, or from the United Kingdom to another State, where the sentenced person has escaped or absconded from lawful custody and fled to another country. The 1984 Act s 4B provides that the effect of a warrant under s 4A issued in respect of a person who has fled from the United Kingdom is to transfer responsibility for the detention of a person and the continued enforcement of the sentence from the relevant Minister to the authorities of the country or territory in which the person is present. The 1984 Act s 4C provides that the effect of a warrant under s 4A issued in respect of a person who has fled to the United Kingdom is to authorise the taking into custody and the detention of the relevant person in the United Kingdom in accordance with the provisions of that warrant.

See also 1984 Act ss 4D-4F (added by Criminal Justice and Immigration Act 2008 s 95) (persons believed to fall within the 1984 Act s 4A(3): powers of arrest and detention).

556 Transfer out of the United Kingdom

TEXT AND NOTES--1984 Act s 2 further amended: Criminal Justice and Immigration Act 2008 Sch 26 para 12.

TEXT AND NOTES 3, 4--1984 Act s 2(1) now s 2(1), (1A) (substituted by Criminal Justice and Immigration Act 2008 s 93). For transitional provisions and savings see Sch 27 para 30.

NOTE 9--Repatriation of Prisoners Act 1984 s 2(4) further amended: Criminal Justice Act 2003 Sch 37 Pt 8.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(3) REPATRIATION OF PRISONERS/557. Transfer into the United Kingdom.

557. Transfer into the United Kingdom.

The effect of a warrant providing for the transfer of the prisoner¹ into the United Kingdom² is to authorise:

- 41 (1) the bringing of the prisoner into the United Kingdom from a place outside the United Kingdom³;
- 42 (2) the taking of the prisoner to such place in any part of the United Kingdom, being a place at which effect may be given to the provisions contained in the warrant by virtue of head (3) below, as may be specified in the warrant⁴; and
- 43 (3) the detention of the prisoner in any part of the United Kingdom in accordance with such provisions as may be contained in the warrant, being provisions appearing to the Secretary of State⁵ to be appropriate for giving effect to the international arrangements⁶ in accordance with which the prisoner is transferred⁷.

Subject to provisions relating to temporary return⁸, a provision may not be contained by virtue of head (3) above in a warrant unless it satisfies the following two conditions⁹, that is to say:

- 44 (a) it is a provision with respect to the detention of a person in a prison, a hospital or any other institution¹⁰; and
- 45 (b) it is a provision which at the time the warrant is issued may be contained in an order¹¹ made either (i) in the course of the exercise of its criminal jurisdiction by a court in the part of the United Kingdom in which the prisoner is to be detained¹²; or (ii) otherwise than by a court but for the purpose of giving effect to an order made as mentioned in head (i) above¹³.

A provision contained by virtue of head (3) above in a warrant has for all purposes the same effect as the same provision contained in an order made as mentioned in head (b) above¹⁴; and takes effect with the delivery of the prisoner to the place specified in the warrant for the purposes of head (2) above¹⁵.

1 For the meaning of 'the prisoner' see PARA 555 text to note 5 ante.

2 For the meaning of 'United Kingdom' see PARA 504 note 1 ante.

3 Repatriation of Prisoners Act 1984 s 3(1)(a).

4 Ibid s 3(1)(b).

5 As to the Secretary of State see PARA 505 ante.

6 For the meaning of 'international arrangements' see PARA 555 note 2 ante.

7 Repatriation of Prisoners Act 1984 s 3(1)(c). In determining what provisions are appropriate for giving effect to the international arrangements, the Secretary of State must, to the extent that it appears to him consistent with those arrangements to do so, have regard to the inappropriateness of the warrant's containing provisions which:

20 (1) are equivalent to more than the maximum penalties (if any) that may be imposed on a person who, in the part of the United Kingdom in which the prisoner is to be detained, commits

an offence corresponding to that in respect of which the prisoner is required to be detained in the country or territory from which he is to be transferred (s 3(3)(a)); or

- 21 (2) are framed without reference to the length (a) of the period during which the prisoner is, but for the transfer, required to be detained in that country or territory (s 3(3)(b)(i)); and (b) of so much of that period as will have been, or be treated as having been, served by the prisoner when the provisions take effect (s 3(3)(b)(ii)).

It seems that where the sentencing state has imposed a sentence which is in excess of the English maximum, the Secretary of State can do no more than reduce it to the English maximum: see *Read v Secretary of State for the Home Department* [1989] 1 AC 1014, [1988] 3 All ER 993, HL.

As to the period a prisoner transferred into the United Kingdom is deemed to have served for the purposes of the release provisions see the Repatriation of Prisoners Act 1984 s 3(7), Schedule paras 1, 2 (amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 s 47(1), Sch 5 para 3(1), (4); the Criminal Justice Act 1991 s 100, Sch 11 para 35(3)(b); the Crime (Sentences) Act 1997 s 42, Sch 2 paras 2, 3; and the Crime and Disorder Act 1998 s 119, Sch 8 paras 58, 59). See also *R v Secretary of State for the Home Department, ex p Ellaway* (1996) Times, 21 February, DC. This case highlighted anomalies in the law, which were removed by the amendments made by the Crime (Sentences) Act 1997 Sch 2 paras 2, 3.

Where the provisions contained in a warrant under the Repatriation of Prisoners Act 1984 s 3(1)(c) (see head (3) in the text) include provision equivalent to a sentence in relation to which the Crime (Sentences) Act 1997 s 29(1) (see PARA 622 post) applies, s 29(1) has effect as if the reference to consultation with the trial judge if available were omitted: Repatriation of Prisoners Act 1984 Schedule para 3 (substituted by the Crime and Disorder Act 1998 Sch 8 para 60).

References in the Mental Health Act 1983 to the date of an order under that Act have effect, in relation to any of the provisions contained in a warrant under the Repatriation of Prisoners Act 1984 s 3(1)(c) (see head (3) in the text), as references to the day on which those provisions take effect: see Schedule para 5(1). Where those provisions include provisions equivalent to a hospital order or a hospital order and a restriction order, the prisoner may (in addition to any application he may make under the Mental Health Act 1983) apply to a Mental Health Review Tribunal at any time in the period of six months beginning with the day on which the provisions in the warrant take effect: see the Repatriation of Prisoners Act 1984 Schedule para 5(2).

The provisions contained in a warrant under s 3(1)(c) (see head (3) in the text) must be disregarded for the purposes of the application, in relation to any offence of which the prisoner was convicted in a country or territory outside the British Islands, of the Rehabilitation of Offenders Act 1974 (except s 1(2)): see the Repatriation of Prisoners Act 1984 Schedule para 6.

For the purposes of the Representation of the People Act 1981 s 1, the prisoner is deemed, while detained in accordance with the provisions contained in a warrant under the Repatriation of Prisoners Act 1984 s 3(1)(c) (see head (3) in the text), to be detained in pursuance of the order under which, at the time of his transfer into the United Kingdom, he was required to be detained in the country or territory from which he was transferred: see Schedule para 7.

8 le *ibid* s 4(2), (3), (4) (see PARA 558 post): see s 3(2).

9 *Ibid* s 3(2).

10 *Ibid* s 3(2)(a).

11 For the purposes of determining whether at any particular time any such order as is mentioned in head (b) in the text could have been made as so mentioned, there must be disregarded both (1) any requirement that certain conditions must be satisfied before the order is made (*ibid* s 3(8)(a)); and (2) any restriction on the minimum period in respect of which the order may be made (s 3(8)(b)). For the meaning of 'order' see PARA 555 note 3 ante.

12 *Ibid* s 3(2)(b)(i).

13 *Ibid* s 3(2)(b)(ii). As to the content of provisions contained in a warrant by virtue of head (3) in the text see further s 3(9) (added by the Criminal Justice Act 1991 s 100, Sch 11 para 35(2); and amended by the Crime and Disorder Act 1998 s 119, Sch 8 para 57); and the Repatriation of Prisoners Act 1984 s 3(9) (*sic*) (added by the Prisoners and Criminal Proceedings (Scotland) Act 1993 ss 47(1), 48(6), Sch 5 para 3(1), (3); and amended by the Crime and Punishment (Scotland) Act 1997 s 62, Sch 1 para 10(1), (3), Sch 3).

14 Repatriation of Prisoners Act 1984 s 3(4). This provision does not confer any right of appeal on the prisoner against provisions contained in a warrant (ie by virtue of head (3) in the text): s 3(6).

15 *Ibid* s 3(5).

UPDATE

555-561 Repatriation of Prisoners

See further Repatriation of Prisoners Act 1984 s 4A (ss 4A-4C added by Criminal Justice and Immigration Act 2008 s 94) which provides for a relevant Minister to issue a warrant transferring responsibility for the continued enforcement of a sentence to the United Kingdom, or from the United Kingdom to another State, where the sentenced person has escaped or absconded from lawful custody and fled to another country. The 1984 Act s 4B provides that the effect of a warrant under s 4A issued in respect of a person who has fled from the United Kingdom is to transfer responsibility for the detention of a person and the continued enforcement of the sentence from the relevant Minister to the authorities of the country or territory in which the person is present. The 1984 Act s 4C provides that the effect of a warrant under s 4A issued in respect of a person who has fled to the United Kingdom is to authorise the taking into custody and the detention of the relevant person in the United Kingdom in accordance with the provisions of that warrant.

See also 1984 Act ss 4D-4F (added by Criminal Justice and Immigration Act 2008 s 95) (persons believed to fall within the 1984 Act s 4A(3): powers of arrest and detention).

557 Transfer into the United Kingdom

TEXT AND NOTES--1984 Act s 3, Schedule further amended: Criminal Justice and Immigration Act 2008 Sch 26 paras 13, 19, Sch 28 Pt 6.

The Secretary of State must refer the case of any transferred life prisoner to the High Court for a minimum term of imprisonment to be determined: see the Criminal Justice Act 2003 s 273(1)-(3). See further s 273(5) (added by Criminal Justice and Immigration Act 2008 Sch 26 para 73). An appeal may be made with leave to the Court of Appeal against such a decision, which is to made by a single judge without an oral hearing: see Criminal Justice Act 2003 s 274(1)-(3), (5) (s 274 amended by Constitutional Reform Act 2005 Sch 9 para 82(5) (in force on 1 October 2009: SI 2009/1604)).

NOTE 7--Crime (Sentences) Act 1997 Sch 2 paras 2, 3 amended: Criminal Justice and Immigration Act 2008 Sch 26 para 33.

Repatriation of Prisoners Act 1984 Schedule para 3 repealed: 2003 Act Sch 32 para 43(3), Sch 37 Pt 8. On repatriation, it is the balance of the sentence alone to which the early release provisions apply: *R v Secretary of State for the Home Department, ex p Oshin* [2000] 2 All ER 955, DC.

For 'Mental Health Review Tribunal' read 'First-tier Tribunal, Mental Health Review Tribunal for Wales or Mental Health Review Tribunal for Northern Ireland': Repatriation of Prisoners Act 1984 Schedule para 5(2), (2A) (Schedule para 5(2) added, Schedule para 5(2A) amended by SI 2008/2833).

NOTE 13--1984 Act s 3(9) repealed: 2003 Act Sch 32 para 42, Sch 37 Pt 8.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(3) REPATRIATION OF PRISONERS/558. Temporary return.

558. Temporary return.

A single warrant may provide for the transfer of the prisoner¹ both out of and into (or into and out of) the United Kingdom² if it appears to the Secretary of State³ that the transfers are to be for the purpose of the temporary return of the prisoner⁴ either:

- 46 (1) from the United Kingdom to a country or territory outside the British Islands from which he has previously been transferred into the United Kingdom under the Repatriation of Prisoners Act 1984 or any other enactment⁵; or
- 47 (2) to the United Kingdom from a country or territory outside the British Islands to which he has previously been transferred from the United Kingdom under the Repatriation of Prisoners Act 1984⁶.

The provisions contained⁷ in a warrant issued for the purpose of the temporary return of the prisoner to a country or territory outside the British Islands may, where the prisoner is required when that warrant is issued to be detained in accordance with provisions so contained in an earlier warrant, require the prisoner to continue, after his return to the part of the United Kingdom in which the provisions contained in the earlier warrant have effect, to be detained in accordance with those earlier provisions⁸. A warrant issued containing, with respect to provisions contained in an earlier warrant, any such requirement must provide that any period during which the prisoner is out of the part of the United Kingdom in which the provisions contained in the earlier warrant have effect and is in custody is to be treated (except to such extent as may be specified in the warrant in order that effect may be given to the international arrangements⁹ in question) as a period during which the prisoner is detained under the provisions contained in the earlier warrant¹⁰.

The provisions contained¹¹ in a warrant issued for the purpose of the temporary return of the prisoner to the United Kingdom may require the prisoner to be detained in accordance with any order¹² which on his return will apply¹³ in respect of him¹⁴.

1 For the meaning of 'the prisoner' see PARA 555 text to note 5 ante.

2 For the meaning of 'United Kingdom' see PARA 504 note 1 ante.

3 As to the Secretary of State see PARA 505 ante.

4 Repatriation of Prisoners Act 1984 s 4(1).

5 Ibid s 4(1)(a).

6 Ibid s 4(1)(b).

7 Ie by virtue of ibid s 3(1)(c) (see PARA 557 head (3) ante): see s 4(2).

8 Ibid s 4(2).

9 For the meaning of 'international arrangements' see PARA 555 note 2 ante.

10 Repatriation of Prisoners Act 1984 s 4(3).

11 Ie by virtue of ibid s 3(1)(c) (see PARA 557 head (3) ante): see s 4(4).

12 For the meaning of 'order' see PARA 555 note 3 ante.

13 le in pursuance of the Repatriation of Prisoners Act 1984 s 2(2) (see PARA 556 ante); see s 4(4).

14 Ibid s 4(4). Section 3(7), Schedule (see PARA 557 note 7 ante) does not apply in relation to the provisions so contained in such a warrant: see s 4(4).

UPDATE

555-561 Repatriation of Prisoners

See further Repatriation of Prisoners Act 1984 s 4A (ss 4A-4C added by Criminal Justice and Immigration Act 2008 s 94) which provides for a relevant Minister to issue a warrant transferring responsibility for the continued enforcement of a sentence to the United Kingdom, or from the United Kingdom to another State, where the sentenced person has escaped or absconded from lawful custody and fled to another country. The 1984 Act s 4B provides that the effect of a warrant under s 4A issued in respect of a person who has fled from the United Kingdom is to transfer responsibility for the detention of a person and the continued enforcement of the sentence from the relevant Minister to the authorities of the country or territory in which the person is present. The 1984 Act s 4C provides that the effect of a warrant under s 4A issued in respect of a person who has fled to the United Kingdom is to authorise the taking into custody and the detention of the relevant person in the United Kingdom in accordance with the provisions of that warrant.

See also 1984 Act ss 4D-4F (added by Criminal Justice and Immigration Act 2008 s 95) (persons believed to fall within the 1984 Act s 4A(3): powers of arrest and detention).

558 Temporary return

TEXT AND NOTES--1984 Act s 4 amended: Criminal Justice and Immigration Act 2008 Sch 26 para 14.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(3) REPATRIATION OF PRISONERS/559. Operation of warrant and retaking prisoners.

559. Operation of warrant and retaking prisoners.

Where a warrant has been issued the following provisions have effect for the purposes of the warrant, except¹ in relation to any time when the prisoner² is required to be detained in accordance with provisions contained³ in the warrant⁴. The prisoner is deemed to be in the legal custody of the Secretary of State⁵ at any time when, being in the United Kingdom⁶ or on board a British ship, a British aircraft or a British hovercraft⁷, he is being taken under the warrant to or from any place, or being kept in custody under the warrant⁸. The Secretary of State may, from time to time, designate any person as a person who is for the time being authorised for the purposes of the warrant to take the prisoner to or from any place under the warrant, or to keep the prisoner in custody under the warrant⁹. A person authorised by or for the purposes of the warrant to take the prisoner to or from any place or to keep the prisoner in custody has all the powers, authority, protection and privileges¹⁰:

- 48 (1) of a constable in any part of the United Kingdom in which that person is for the time being¹¹; or
- 49 (2) if he is outside the United Kingdom, of a constable in the part of the United Kingdom to or from which the prisoner is to be taken under the warrant¹².

If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a constable¹³ and taken to any place to which he may be taken under the warrant¹⁴.

1 He without prejudice to the Repatriation of Prisoners Act 1984 s 3(4) (see PARA 557 ante) or any enactment contained otherwise than in that Act: see s 5(1).

2 For the meaning of 'the prisoner' see PARA 555 text to note 5 ante.

3 He by virtue of the Repatriation of Prisoners Act 1984 s 3(1)(c) (see PARA 557 head (3) ante): see s 5(1).

4 Ibid s 5(1).

5 As to the Secretary of State see PARA 505 ante.

6 For the meaning of 'United Kingdom' see PARA 504 note 1 ante.

7 'British aircraft' means a British-controlled aircraft within the meaning of the Civil Aviation Act 1982 s 92 (as amended) (see AIR LAW vol 2 (2008) PARA 619), or one of Her Majesty's aircraft; 'British hovercraft' means a British-controlled hovercraft within the meaning of s 92 (as amended) as applied in relation to hovercraft by virtue of provision made under the Hovercraft Act 1968 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 381), or one of Her Majesty's hovercraft; 'British ship' means a British ship within the meaning of the Merchant Shipping Act 1995 s 1 (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 230), or one of Her Majesty's ships; and references to Her Majesty's aircraft, hovercraft or ships are references to the aircraft, hovercraft or, as the case may be, ships which belong to, or are exclusively employed in the service of, Her Majesty in right of the government of the United Kingdom: Repatriation of Prisoners Act 1984 s 5(6) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 73).

8 Repatriation of Prisoners Act 1984 s 5(2).

9 Ibid s 5(3).

10 Ibid s 5(4).

11 Ibid s 5(4)(a).

12 Ibid s 5(4)(b).

13 For the purposes of ibid s 5(5), 'constable', in relation to any part of the United Kingdom, means any person who is a constable in that or any other part of the United Kingdom or any person who, at the place in question has, under any enactment (including s 5(4): see the text and notes 10-11 supra), the powers of a constable in that or any other part of the United Kingdom: s 5(7).

14 Ibid s 5(5).

UPDATE

555-561 Repatriation of Prisoners

See further Repatriation of Prisoners Act 1984 s 4A (ss 4A-4C added by Criminal Justice and Immigration Act 2008 s 94) which provides for a relevant Minister to issue a warrant transferring responsibility for the continued enforcement of a sentence to the United Kingdom, or from the United Kingdom to another State, where the sentenced person has escaped or absconded from lawful custody and fled to another country. The 1984 Act s 4B provides that the effect of a warrant under s 4A issued in respect of a person who has fled from the United Kingdom is to transfer responsibility for the detention of a person and the continued enforcement of the sentence from the relevant Minister to the authorities of the country or territory in which the person is present. The 1984 Act s 4C provides that the effect of a warrant under s 4A issued in respect of a person who has fled to the United Kingdom is to authorise the taking into custody and the detention of the relevant person in the United Kingdom in accordance with the provisions of that warrant.

See also 1984 Act ss 4D-4F (added by Criminal Justice and Immigration Act 2008 s 95) (persons believed to fall within the 1984 Act s 4A(3): powers of arrest and detention).

559 Operation of warrant and retaking prisoners

TEXT AND NOTES--1984 Act s 5 further amended: Criminal Justice and Immigration Act 2008 Sch 26 para 16.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(3) REPATRIATION OF PRISONERS/560. Revocation etc of warrants.

560. Revocation etc of warrants.

If at any time it appears to the Secretary of State¹ appropriate, in order that effect may be given to international arrangements providing for transfer² or in certain cases³, for a warrant to be revoked or varied, he may, as the case may require⁴:

- 50 (1) revoke that warrant⁵; or
- 51 (2) revoke that warrant and issue a new warrant containing provision superseding some or all of the provisions of the previous warrant⁶.

The provision that may be contained in a new warrant issued by virtue of head (2) above is any provision that could have been contained in the previous warrant⁷. A new warrant issued by virtue of head (2) above may provide:

- 52 (a) that a provision contained in it is to be treated as having taken effect when the provisions which that provision supersedes took effect⁸;
- 53 (b) that things done under or for the purposes of the superseded provisions are, accordingly, to be treated as having been done under or for the purposes of the provision contained in the new warrant⁹; and
- 54 (c) that an enactment in force at the time the new warrant is issued is, for these purposes, to be treated as having been in force when the superseded provisions took effect¹⁰.

These powers are exercisable notwithstanding any defect in the warrant which is revoked¹¹.

1 As to the Secretary of State see PARA 505 ante.

2 Ie any such arrangements as are mentioned in the Repatriation of Prisoners Act 1984 s 1(1)(a) (see PARA 555 ante): see s 6(1).

3 Ie in a case falling within ibid s 1(2) (see PARA 555 ante): see s 6(1).

4 Ibid s 6(1).

5 Ibid s 6(1)(a).

6 Ibid s 6(1)(b). Section 6(1) is subject to s 1(4) (see PARA 555 ante): see s 6(1).

7 Ibid s 6(2).

8 Ibid s 6(3)(a).

9 Ibid s 6(3)(b).

10 Ibid s 6(3)(c).

11 Ibid s 6(4).

UPDATE

555-561 Repatriation of Prisoners

See further Repatriation of Prisoners Act 1984 s 4A (ss 4A-4C added by Criminal Justice and Immigration Act 2008 s 94) which provides for a relevant Minister to issue a warrant transferring responsibility for the continued enforcement of a sentence to the United Kingdom, or from the United Kingdom to another State, where the sentenced person has escaped or absconded from lawful custody and fled to another country. The 1984 Act s 4B provides that the effect of a warrant under s 4A issued in respect of a person who has fled from the United Kingdom is to transfer responsibility for the detention of a person and the continued enforcement of the sentence from the relevant Minister to the authorities of the country or territory in which the person is present. The 1984 Act s 4C provides that the effect of a warrant under s 4A issued in respect of a person who has fled to the United Kingdom is to authorise the taking into custody and the detention of the relevant person in the United Kingdom in accordance with the provisions of that warrant.

See also 1984 Act ss 4D-4F (added by Criminal Justice and Immigration Act 2008 s 95) (persons believed to fall within the 1984 Act s 4A(3): powers of arrest and detention).

560 Revocation etc of warrants

TEXT AND NOTES--1984 Act s 6 amended: Criminal Justice and Immigration Act 2008 Sch 26 para 17.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(3) REPATRIATION OF PRISONERS/561. Expenses.

561. Expenses.

Any expenses incurred by the Secretary of State¹ for the purposes of the Repatriation of Prisoners Act 1984 must generally be defrayed out of money provided by Parliament².

However, the Secretary of State has a duty, in the case of the transfer of a person into the United Kingdom³ under that Act, to secure the payment to him by that person, or from some other source, of the amount of any expenses⁴ incurred by him in connection with the conveyance of that person to the United Kingdom⁵. For this purpose, the Secretary of State has the same power as in any other case where he assists the return of a person to the United Kingdom to require a person to give an undertaking to pay the Secretary of State the whole or any part of that amount, to enforce such an undertaking and to make such other arrangements for recovering that amount as he thinks fit⁶. These provisions do not apply to the extent that in any case it appears to the Secretary of State that it would be unreasonable for him to exercise any of the powers conferred by them either because of the exceptional circumstances of the case or because the means of the prisoner⁷ are insufficient to meet the expenses and their recovery, whether immediately or at some future time, from the prisoner or from any other source is impracticable⁸.

The Secretary of State must pay any sums received by him⁹ into the Consolidated Fund¹⁰.

¹ As to the Secretary of State see PARA 505 ante.

² Repatriation of Prisoners Act 1984 s 7(1).

³ For the meaning of 'United Kingdom' see PARA 504 note 1 ante.

⁴ Such expenses do not include (1) any expenses of providing an escort for a person transferred into the United Kingdom under the Repatriation of Prisoners Act 1984 (s 7(4)(a)); or (2) any expenses of the conveyance of such a person beyond the place at which he first arrives in the United Kingdom (s 7(4)(b)).

⁵ Ibid s 7(2).

⁶ Ibid s 7(2).

⁷ For the meaning of 'the prisoner' see PARA 555 text to note 5 ante.

⁸ Repatriation of Prisoners Act 1984 s 7(3).

⁹ Ie by virtue of ibid s 7(2); see s 7(5).

¹⁰ Ibid s 7(5). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

UPDATE

555-561 Repatriation of Prisoners

See further Repatriation of Prisoners Act 1984 s 4A (ss 4A-4C added by Criminal Justice and Immigration Act 2008 s 94) which provides for a relevant Minister to issue a warrant transferring responsibility for the continued enforcement of a sentence to the United Kingdom, or from the United Kingdom to another State, where the sentenced person has escaped or absconded from lawful custody and fled to another country. The

1984 Act s 4B provides that the effect of a warrant under s 4A issued in respect of a person who has fled from the United Kingdom is to transfer responsibility for the detention of a person and the continued enforcement of the sentence from the relevant Minister to the authorities of the country or territory in which the person is present. The 1984 Act s 4C provides that the effect of a warrant under s 4A issued in respect of a person who has fled to the United Kingdom is to authorise the taking into custody and the detention of the relevant person in the United Kingdom in accordance with the provisions of that warrant.

See also 1984 Act ss 4D-4F (added by Criminal Justice and Immigration Act 2008 s 95) (persons believed to fall within the 1984 Act s 4A(3): powers of arrest and detention).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(4) PRISONERS' RIGHTS AND PRIVILEGES/562. Legal capacity.

(4) PRISONERS' RIGHTS AND PRIVILEGES

562. Legal capacity.

A sentence of imprisonment does not automatically extinguish a prisoner's legal rights. All public and private legal disabilities of convicted prisoners have been abolished¹, except that they are disenfranchised for the duration of their sentences². A person sentenced to more than a year's imprisonment in the United Kingdom or the Republic of Ireland is disqualified for membership of the House of Commons while serving the sentence³; and the seat of a member of the House of Commons who becomes disqualified by virtue of such a prison sentence is vacated⁴.

1 The Forfeiture Act 1870 ss 6-30 were repealed and s 2 was amended by the Criminal Justice Act 1948 ss 70(1), 83(3), Sch 10 Pt I and the Criminal Law Act 1967 s 10, Sch 3 Pt III.

2 See the Representation of the People Act 1983 s 3 (as amended); and ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) PARA 122.

3 See the Representation of the People Act 1981 s 1; and PARLIAMENT vol 78 (2010) PARA 902.

4 See *ibid* s 2(2); and PARLIAMENT vol 78 (2010) PARA 902.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(4) PRISONERS' RIGHTS AND PRIVILEGES/563. Rights and privileges.

563. Rights and privileges.

The ordinary civil and criminal law operates in prisons and governs prisoners and prison staff, subject only to the special legislative provisions governing penal establishments and their inmates. In spite of his imprisonment, a convicted prisoner retains all civil rights which are not taken away expressly or by necessary implication¹. All decisions affecting a prisoner taken under the Prison Act 1952 or the Prison Rules 1999² are susceptible to challenge by an application for judicial review³. Many of the matters covered by the Prison Rules 1999 are expressly subject to the discretion of the Secretary of State⁴, but several are expressed in unqualified form and a number cast duties on the prison authorities, or confer rights on, or seek to protect, prisoners⁵.

It is an offence against discipline for a prisoner to disobey any lawful order or to fail to comply with any rule or regulation applying to him⁶. However, the prison authorities must act in accordance with the ordinary law and do not have unlimited powers over prisoners merely by virtue of their imprisonment⁷.

1 *Raymond v Honey* [1983] 1 AC 1 at 10, [1982] 1 All ER 756 at 759, HL, per Lord Wilberforce, and at 14 and 762 per Lord Bridge of Harwich. See also *R v Secretary of State for the Home Department, ex p Leech* [1994] QB 198 at 209-212, [1993] 4 All ER 539 at 547-550, CA, per Steyn LJ. In relation to all civil rights, the starting point is to assume that the right is preserved unless it has been expressly removed or its loss is an inevitable consequence of lawful detention in custody: *R v Secretary of State for the Home Department, ex p Simms* [1999] 3 All ER 400 at 403, [1999] 3 WLR 328 at 331, HL, per Lord Steyn.

It is not correct, however, to talk of prisoners enjoying a form of 'residual liberty' within their otherwise lawful imprisonment, such as entitles them vis à vis the governor or the Secretary of State to sustain an action in damages for false imprisonment whenever their treatment or conditions of confinement fail to accord with the requirements of primary or delegated legislation: *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1992] 1 AC 58 at 162, sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733 at 744, HL, per Lord Bridge of Harwich.

The Human Rights Act 1998 applies to prisoners without distinction or qualification. See further PARA 504 ante.

2 *le the Prison Rules 1999*, SI 1999/728.

3 See *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1992] 1 AC 58 at 155, sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733 at 737, HL, per Lord Bridge of Harwich; and PARA 564 post.

4 As to the Secretary of State see PARA 505 ante.

5 As to breaches of the Prison Rules 1999, SI 1999/728, see PARA 564 post.

6 See *ibid* r 51(22), (23); and PARA 597 post. As to the supplying of information about the rules to a prisoner see r 10(1); and PARA 547 ante.

7 See PARA 588 et seq post. This has been recognised from the earliest times: see *Anon* (1654) Sty 433; *R v Huggins* (1730) 2 Stra 883; *R v Carlile* (1822) 1 Dow & Ry KB 535 at 537 per Abbott CJ. See also the Human Rights Act 1998; the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Arts 2-12; and PARA 504 ante.

UPDATE

563 Rights and privileges

NOTE 1--The refusal to permit a prisoner the right of access to artificial insemination facilities is neither in breach of his human rights nor unlawful: *R v Secretary of State for the Home Department, ex p Mellor* [2001] EWCA Civ 472, [2001] 2 FCR 153.

NOTE 3--A prisoner is not entitled to challenge a prison service decision not to allow him to participate in a rehabilitation programme, even though such a programme may improve his prospects of early release: *R v Secretary of State for the Home Department, ex p Shaw* [2000] 3 FCR 148.

NOTE 5--As to the protection of prisoners in a protected witness unit see *R (on the application of Bloggs 61) v Secretary of State for the Home Department* [2003] EWCA Civ 686, [2003] 1 WLR 2725.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(4) PRISONERS' RIGHTS AND PRIVILEGES/564. Breaches of the Prison Act 1952 and the Prison Rules 1999.

564. Breaches of the Prison Act 1952 and the Prison Rules 1999.

The Prison Act 1952 is designed to deal with the administration of prisons and the management and control of prisoners, but nothing in the Act suggests that in the event of a breach of its provisions Parliament intended to confer on prisoners a cause of action sounding in damages¹. The Prison Rules 1999² are regulatory in character, providing a framework within which the prison regime operates, but they are not intended to protect prisoners against loss, injury and damage nor to give them a private law right of action for breach of statutory duty³. Furthermore, a prisoner who is otherwise lawfully imprisoned may not sustain an action for damages for false imprisonment against the governor or the Secretary of State⁴. Accordingly, prisoners who are aggrieved at their treatment at the hands of the prison authorities may only recover damages if they can establish a claim in negligence, assault and battery or misfeasance in a public office⁵. Merely because a breach of the Prison Act 1952 or the Prison Rules 1999 is not actionable per se does not, however, mean that such a breach is not justiciable in public law terms. All decisions affecting the rights, legitimate expectations and status of prisoners taken in pursuance of the Prison Act 1952 and the Prison Rules 1999 are susceptible to judicial review on ordinary principles⁶.

1 *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1992] 1 AC 58, sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733, HL. See also *Pickering v Liverpool Daily Post and Echo Newspapers plc* [1991] 2 AC 370, [1991] 1 All ER 622, HL; *Calveley v Chief Constable of the Merseyside Police* [1989] AC 1228, [1989] 1 All ER 1025, HL; *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633, [1995] 3 All ER 353, HL; *Stovin v Wise* [1996] AC 923, [1996] 3 All ER 801, HL; *Olotu v Home Office* [1997] 1 All ER 385, [1997] 1 WLR 328, CA.

For earlier authorities dealing with the status of prison rules or regulations and the jurisdiction of the courts in supervising their enforcement see *Rioters* (1774) Lofft 436; *R v Carlile* (1882) 1 Dow & Ry KB 535 at 536 per Abbott CJ; *Osborne v Angle* (1835) 2 Scott 500 at 503 per Tindall CJ; *R v Cooper* (1843) 1 LTOS 143; *Cobbett v Grey* (1850) 4 Exch 729; *Osborne v Milman* (1886) 17 QBD 514 (revsd on the facts (1887) QBD 471, CA); *Arbon v Anderson* [1943] KB 252, [1943] 1 All ER 154; *Silverman v Prison Comrs* [1955] Crim LR 116 (affd on the facts [1956] Crim LR 56, CA); *Hancock v Prison Comrs* [1960] 1 QB 117, [1959] 3 All ER 513; *Hinds v Home Office* (1962) Times, 17 January, CA; *Becker v Home Office* [1972] 2 QB 407, [1972] 2 All ER 676, CA; *Williams v Home Office (No 2)* [1981] 1 All ER 1211.

As for the possibility of an action by a prisoner for damages for breach of the Bill of Rights (1688 or 1689) see *R v Secretary of State for the Home Department, ex p Herbage* [1987] QB 872, [1986] 3 All ER 209; on appeal [1987] QB 1077, [1987] 1 All ER 324, CA.

2 *le the Prison Rules 1999*, SI 1999/728.

3 See *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1992] 1 AC 58, sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733, HL (where the issue as to whether the Prison Act 1952 s 47(1) (as amended) is capable of authorising the creation of any private law rights in prisoners was left moot).

4 *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1992] 1 AC 58, sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733, HL. See also *Williams v Home Office (No 2)* [1981] 1 All ER 1211. As to the Secretary of State see PARA 505 ante.

In *R v Deputy Governor of Parkhurst Prison, ex p Hague* supra, the House of Lords either distinguished or overruled the line of authorities which suggested that a prisoner held either in the wrong place or part of a prison or in intolerable conditions of confinement might recover damages against his custodian in a claim for false imprisonment (see *Osborne v Angle* (1835) 2 Scott 500; *Yorke v Chapman* (1839) 10 Ad & El 207; *Cobbett v Grey* (1850) 4 Exch 729; *Osborne v Milman* (1887) 18 QBD 471; *R v Metropolitan Police Comr, ex p Nahar* (1983) Times, 28 May; *R v Board of Visitors of Gartree Prison, ex p Sears* (1985) Times, 20 March; *Middleweek v Chief Constable of Merseyside* [1992] 1 AC 179n, [1990] 3 All ER 662, CA).

A prison officer who acts in bad faith by deliberately subjecting a prisoner to a form of restraint which he knows he has no authority to impose may, however, render himself personally liable to an action for false imprisonment as well as committing the tort of misfeasance in a public office: see *R v Deputy Governor of Parkhurst Prison, ex p Hague* supra at 164 and 745 per Lord Bridge of Harwich. As to misfeasance in public office generally see ADMINISTRATIVE LAW; TORT vol 97 (2010) PARA 719.

5 In *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1992] 1 AC 58 at 166, sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733 at 746, HL, Lord Bridge of Harwich held that a custodian who negligently allows or a fortiori deliberately causes a prisoner to suffer in his health will be in breach of his duty of care to the prisoner, and that a person lawfully detained who is detained in intolerable conditions should also recover damages in a claim in negligence; but cf Lord Ackner at 166 and 746-747 and Lord Goff of Chieveley at 167 and 747. The Secretary of State may be vicariously liable for the actions of prison staff in relation to a claim for misfeasance in a public office: *Racz v Home Office* [1994] 2 AC 45, [1994] 1 All ER 97, HL. See also *Toumia v Evans* (1999) Times, 1 April, CA.

6 *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1992] 1 AC 58 at 155, sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733 at 737, HL, per Lord Bridge of Harwich. See also *Leech v Deputy Governor of Parkhurst Prison* [1988] AC 533, [1988] 1 All ER 485, HL.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(4) PRISONERS' RIGHTS AND PRIVILEGES/565. Duty of care.

565. Duty of care.

The duty on those responsible for one of Her Majesty's prisons is to take reasonable care for the safety of those who are within, including the prisoners¹. Actions will lie, for example, where a prisoner sustains injury as a result of the negligence of prison staff²; or at the hands of another prisoner in consequence of the negligent supervision of the prison authorities³, with greater care and supervision, to the extent that is reasonable and practicable, being required of a prisoner known to be potentially at greater risk than other prisoners⁴; or if negligently put to work in conditions damaging to health⁵; or if inadequately instructed in the use of machinery⁶; or if injured as a result of defective premises⁷.

The prison authorities also owe a duty of care to members of the public, and an action will lie where property is damaged by prisoners which results from negligence on the part of the authorities, but a wide latitude will be allowed the authorities in determining proper ways of dealing with inmates before liability is imposed⁸.

¹ *Ellis v Home Office* [1953] 2 QB 135, [1953] 2 All ER 149 at 154, CA; *Palmer v Home Office* (1988) Guardian, 31 March, CA.

² See, however, *Knight v Home Office* [1990] 3 All ER 237, 4 BMLR 85, in which Pill J held that the standard of care provided for a mentally ill prisoner detained in a prison hospital was not required to be as high as the standard of care provided in a psychiatric hospital outside prison since psychiatric and prison hospitals performed different functions and the duty of care had to be tailored to the act and function to be performed. See also *Brooks v Home Office* [1999] 2 FLR 33, QBD.

As to the liability of the Home Office where a prisoner is held in intolerable conditions of confinement see *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1992] 1 AC 58, sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733, HL. See also *Toumia v Evans* (1999) Times, 1 April, CA.

³ *Ellis v Home Office* [1953] 2 QB 135, [1953] 2 All ER 149, CA. There are a number of examples of cases where prisoners have sought (with greater or lesser success) to fix the prison authorities with liability in negligence in relation to injury caused by the violent acts of other prisoners: see eg *D'Arcy v Prison Comrs* [1956] Crim LR 56; *Anderson v Home Office* (1965) Times, 8 October; *Egerton v Home Office* [1978] Crim LR 494; *Porterfield v Home Office* (1988) Times, 9 March, Independent, 9 March; *Palmer v Home Office* (1988) Guardian, 31 March, CA; *Steele v Northern Ireland Office* [1988] 12 NIJB 1; *H v Secretary of State for the Home Department* (1992) Times, 7 May, 136 SJ 140, CA. See also *Hartshorn v Home Office* (21 January 1999, unreported), CA, in which liability in negligence was established where prison staff failed to take reasonable care to ensure that a non-statutory rule, designed to limit the opportunity for prisoners to assault other prisoners, was obeyed.

⁴ *Egerton v Home Office* [1978] Crim LR 494.

⁵ *Pullen v Prison Comrs* [1957] 3 All ER 470, [1957] 1 WLR 1186. See PARA 579 post.

⁶ *Ferguson v Home Office* (1977) Times, 8 October, where damages were awarded in respect of injuries to a prisoner's hand. The duty applies even if the machine was not at the time being used in the interests of the prison authorities: *Ferguson v Home Office* supra.

⁷ *Christofi v Home Office* (1975) Times, 31 July, where a prisoner was awarded damages for injuries received as a result of a fall on a broken step.

⁸ *Home Office v Dorset Yacht Co Ltd* [1970] AC 1004, [1970] 2 All ER 294, HL.

UPDATE

565 Duty of care

NOTE 3--As to the need to balance security with a regime for the rehabilitation of prisoners which requires them to exercise responsibility see *Thompson v The Home Office* [2001] All ER (D) 75 (Mar), CA (policy allowing young offenders to retain razors for use each day; authority not liable for razor attack by one young offender on another).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(4) PRISONERS' RIGHTS AND PRIVILEGES/566. Effect of conditions on legality of the imprisonment.

566. Effect of conditions on legality of the imprisonment.

A prisoner, whether sentenced to imprisonment or committed to prison on remand or pending trial or otherwise, may be lawfully confined in any prison¹. Since the sentence of the court justifies the fact of imprisonment and the statutory authority justifies the prisoner's confinement in any prison, no action for false imprisonment lies². Accordingly, even if the conditions of the detention become intolerable and contravene the public law duties of the authorities, the detention itself remains lawful³. The conditions in which a prisoner is held are a matter for the Secretary of State⁴ in the exercise of his discretion under the Prison Act 1952 and the Prison Rules 1999⁵. A prisoner who is aggrieved by his conditions of confinement may complain to the appropriate authorities and also, or alternatively, seek permission to move for judicial review with a view to bringing to an end his allegedly unlawful or ultra vires conditions of confinement⁶.

1 See the Prison Act 1952 s 12(1); and PARA 542 ante.

2 *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1992] 1 AC 58, sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733, HL.

3 However, a prison officer who in bad faith deliberately subjects a prisoner to a form of restraint he knows he has no authority to impose may render himself personally liable to an action for false imprisonment as well as committing the tort of misfeasance in a public office: *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1992] 1 AC 58 at 164, sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733 at 745, HL, per Lord Bridge of Harwich. See also *Racz v Home Office* [1994] 2 AC 45, [1994] 1 All ER 97, HL; *Toumia v Evans* (1999) Times, 1 April, CA.

4 As to the Secretary of State see PARA 505 ante.

5 I.e. the Prison Rules 1999, SI 1999/728.

6 *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1992] 1 AC 58, sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733, HL. See also *Williams v Home Office (No 2)* [1981] 1 All ER 1211 at 1241 per Tudor Evans J. The appropriate authorities include the Board of Visitors, the Prisons Ombudsman and the Secretary of State. As to the complaints and grievances procedure see PARA 572 post.

See also the Human Rights Act 1998; the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 3 (which prohibits the imposition of inhuman or degrading treatment or punishment); and PARA 504 ante.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(4) PRISONERS' RIGHTS AND PRIVILEGES/567. Prisoners' property.

567. Prisoners' property.

Any cash which a prisoner has at a prison must be paid into an account under the governor's control, the prisoner being credited with the amount in the prison books¹. At the governor's discretion, any cash sent to a prisoner through the post may be similarly dealt with² or returned to the sender³ or, in a case where the sender's name and address are not known, paid to the National Association for the Care and Resettlement of Offenders for its general purposes⁴.

Any other property which a prisoner has at a prison and which he is not allowed to retain for his own use must be taken into the governor's custody⁵. An inventory of a prisoner's property must be kept and he is required to sign it after having a proper opportunity to see that it is correct⁶.

Any security for money sent to a prisoner through the post must, at the governor's discretion, be (1) delivered to the prisoner or placed with his property at the prison⁷; (2) returned to the sender⁸; or (3) encashed, and the cash dealt with in accordance with the above provisions⁹.

Any other article sent to a prisoner through the post must, at the governor's discretion, be (a) delivered to the prisoner or placed with his property at the prison¹⁰; (b) returned to the sender¹¹; or (c) where the sender's name and address are not known or the article is of such a nature that it would be unreasonable to return it, sold or otherwise disposed of, and the net proceeds of any sale applied in accordance with the above provisions¹².

The prisoner must be informed of the manner in which any money or other article (other than a letter or other communication) sent to him through the post is dealt with¹³. However, a prisoner has no legal right to receive anything sent to him by post and has no cause of action in respect of a failure by the governor to deal with the property in the prescribed manner¹⁴.

The governor may confiscate any unauthorised article found in a prisoner's possession after his reception into prison, or concealed or deposited anywhere in a prison¹⁵. It is an offence against discipline for a prisoner to have any unauthorised article in his possession¹⁶; or to have in his possession a greater quantity of any article than he is authorised to have¹⁷; or to sell or deliver to any person an unauthorised article¹⁸; or to sell or, without permission, deliver to any person any article which he is allowed to have only for his use¹⁹.

The property or possessions allowed to a prisoner are a matter regulated by the schemes of privileges in force both generally and at the particular prison²⁰.

1 See the Prison Rules 1999, SI 1999/728, r 43(3).

2 See *ibid* r 44(1), (2)(a).

3 See *ibid* r 44(1), (2)(b).

4 See *ibid* r 44(1), (2)(c). If the cash is sent to a prisoner committed to prison in default of payment of any sum of money, he must be informed of the receipt of the cash and, unless he objects, it is to be applied towards the satisfaction of the amount due from him: r 44(2) proviso.

5 See *ibid* r 43(2); and PARA 542 ante. Any article remaining unclaimed for more than three years after the prisoner leaves prison or dies may be sold or disposed of, the net proceeds of any sale being paid to the National Association for the Care and Resettlement of Offenders: see r 43(4).

6 See *ibid* r 43(2).

7 See *ibid* r 44(1), (3)(a).

- 8 See *ibid* r 44(1), (3)(b).
- 9 See *ibid* r 44(1), (3)(c). The provisions referred to are those of r 44(2) (see the text and notes 2-4 *supra*).
- 10 See *ibid* r 44(1), (4)(a).
- 11 See *ibid* r 44(1), (4)(b).
- 12 See *ibid* r 44(1), (4)(c). The provisions referred to are those of r 44(2) (see the text and notes 2-4 *supra*).
- 13 See *ibid* r 44(1).
- 14 *Becker v Home Office* [1972] 2 QB 407, [1972] 2 All ER 676, CA.
- 15 Prison Rules 1999, SI 1999/728, r 43(5).
- 16 See *ibid* r 51(12)(a); and PARA 597 post. The offence requires proof of *mens rea*, ie that the prisoner knew not only of the presence of the article but also that he had some control over it; where the charge is that such an article is concealed in the prisoner's cell, *mens rea* is an important requirement in the context of prisoners being required to share cells with others: *R v Deputy Governor of Camphill Prison, ex p King* [1985] QB 735, [1984] 3 All ER 897, CA.
- 17 See the Prison Rules 1999, SI 1999/728, r 51(12)(b); and PARA 597 post.
- 18 See *ibid* r 51(13); and PARA 597 post.
- 19 See *ibid* r 51(14); and PARA 597 post.
- 20 See PARA 568 post.

UPDATE

567 Prisoners' property

TEXT AND NOTES 1-13--For 'through the post' (in each place) read 'by post': SI 1999/728 r 44(1) (amended by SI 2001/1149).

NOTE 1--There is nothing in the wording of r 43(3) to suggest the imposition of a trust on prisoners' money coming into the hands of the prison governor: *Duggan v Governor of Full Sutton Prison* [2004] EWCA Civ 78, [2004] 2 All ER 966, [2004] 1 WLR 1010.

NOTE 5--SI 1999/728 r 43(4) (as amended by SI 2009/3082) now refers to a period of one year rather than three years.

TEXT AND NOTE 6--Where a prisoner is serving a sentence of imprisonment to which an intermittent custody order relates, an inventory must only be kept where the value of that property is estimated by the governor to be in excess of £100: SI 1999/728 r 43(2A) (added by SI 2003/3301).

NOTE 15--Prison authorities are not permitted to destroy any confiscated item unless it is of a noxious character: *R (on the application of Coleman) v Governor of HMP Wayland* [2009] All ER (D) 44 (Apr).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(4) PRISONERS' RIGHTS AND PRIVILEGES/568. Privileges.

568. Privileges.

Every prison must establish systems of privileges approved by the Secretary of State¹ and appropriate to the classes of prisoners there, which must include arrangements under which money earned by prisoners in prison may be spent by them within the prison². Approved systems of privileges may include arrangements under which prisoners may be allowed time outside their cells and in association with one another, in excess of the minimum time which is otherwise allowed to prisoners at the prison for this purpose³. Approved systems of privileges may also include arrangements under which privileges may be granted to prisoners only in so far as they have met, and for so long as they continue to meet, specified standards in their behaviour and their performance in work or other activities⁴. Systems of privileges which include arrangements under which the grant of privileges is dependent on prisoners' behaviour and work performance must include procedures to be followed in determining whether or not any of the privileges concerned will be granted, or will continue to be granted, to a prisoner⁵. Such procedures must include a requirement that the prisoner be given reasons for any decision adverse to him together with a statement of the means by which he may appeal against it⁶. These provisions do not confer on a prisoner any entitlement to any privilege or affect any other provision in the Prison Rules 1999 as a result of which any privilege may be forfeited or otherwise lost or a prisoner deprived of association with other prisoners⁷.

1 As to the Secretary of State see PARA 505 ante.

2 Prison Rules 1999, SI 1999/728, r 8(1). The national framework which governs the operation of the incentives and earned privileges scheme is to be found in Instruction to Governors 74/1995. See also Standing Order 4. Each prison operates its own privilege scheme, within that national framework. The fundamental principle is that schemes should be built around incentives which motivate prisoners to good behaviour and performance. They must specify aims, criteria and processes and set out the arrangements for 'key earnable privileges' and other acceptable privileges tied to local circumstances. The formulation of each scheme is left to individual governors (or directors of contracted-out prisons) but all schemes must be submitted to area managers for approval. The formulation of criteria necessary for the operation of the incentives and earned privileges scheme is a matter of internal prison management; and a prisoner who is, for example, denied access to the enhanced regime available under the scheme may only challenge such a decision where he can demonstrate bad faith or crude irrationality: see *R v Secretary of State for the Home Department, ex p Hepworth* (25 March 1997, unreported), DC, per Laws J. A decision to deny a prisoner the privilege of an enhanced regime has no direct or immediate consequences for the prisoner's release date: *R v Secretary of State for the Home Department, ex p Hepworth* supra. See also *R v HMP Featherstone, ex p Bowen* (25 October 1998, unreported).

3 Prison Rules 1999, SI 1999/728, r 8(2).

4 Ibid r 8(3).

5 Ibid r 8(4).

6 Ibid r 8(4).

7 See ibid r 8(5).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(4) PRISONERS' RIGHTS AND PRIVILEGES/569. Contact with persons outside generally.

569. Contact with persons outside generally.

Special attention must be paid to the maintenance of such relations between a prisoner and his family as are desirable in the best interests of both¹. A prisoner must be encouraged and assisted to establish and maintain such relations with persons and agencies outside prison as may, in the governor's opinion, best promote the interests of the prisoner's family and his own social rehabilitation². Prisoners must be permitted to marry³ and facilities are available for them to do so in prison⁴.

With a view to securing discipline and good order or the prevention of crime or in the interests of any persons, the Secretary of State⁵ may impose restrictions, either generally or in a particular case, upon the letters or other communications⁶ to be permitted between a prisoner and other persons⁷. Except as provided in the Prison Rules 1999, a prisoner may not communicate with any outside person, or that person with him, without the leave of the Secretary of State, or as a privilege⁸. Subject to the provisions of the Prison Rules 1999⁹, every letter or other communication to or from a prisoner may be read, listened to, logged, recorded or examined by the governor or an officer deputed by him, and the governor may, at his discretion, stop any letter or other communication on the ground that it is of inordinate length¹⁰.

An additional letter or visit may be allowed by the governor as a privilege or where it is necessary for the prisoner's welfare or that of his family¹¹; the Board of Visitors may allow a prisoner an additional letter or visit in special circumstances, and may direct that a visit may extend beyond the normal duration¹²; and the Secretary of State may allow additional letters or visits in relation to any prisoner or class of prisoners¹³.

A person detained in prison in default of finding a surety or of payment of a sum of money may communicate with, and be visited at any reasonable time on a weekday by, any relative or friend to arrange for a surety or payment in order to secure his release from prison¹⁴. Such a letter or visit, and those under the special provisions relating to communicating with lawyers¹⁵ and interviews with police officers¹⁶, do not count against a prisoner's ordinary entitlement¹⁷.

1 Prison Rules 1999, SI 1999/728, r 4(1).

2 Ibid r 4(2).

3 Application 7114/75 *Hamer v United Kingdom* (1979) 4 EHRR 139, EComHR; Application 8186/78 *Draper v United Kingdom* 24 DR 72 (1980), EComHR.

4 See the Marriages Act 1983 s 1.

5 As to the Secretary of State see PARA 505 ante.

6 'Communications' includes communications during or by means of visits or by means of a telecommunications system or telecommunications apparatus, and 'telecommunications apparatus' has the meaning assigned to it by the Telecommunications Act 1984 s 4(3), Sch 2 para 1 (see TELECOMMUNICATIONS vol 97 (2010) PARAS 59, 163): see the Prison Rules 1999, SI 1999/728, r 34(8). This is the first time communications by telephone have been acknowledged in the regulation of prisons. See also the Prison Service Circular Instruction 21/1992; the Prison Service Standing Order 5G. Telephone calls are subject to monitoring and may be stopped on the same grounds as letters: see the Prison Rules 1999, SI 1999/728, r 34(4); the text and note 10 infra; and PARA 570 post. Calls to the media are prohibited whenever the call itself or the information communicated is intended for publication or broadcast: Prison Service Standing Order 5G. Such a restriction does not amount to an unjustifiable interference with a prisoner's right to freedom of expression: Application 33742/96 *Bamber v United Kingdom* [1998] EHRLR 110, EComHR. See also Prison Service Order 4400, Prisoner Communications: Child Protection Measures and Protection from Harassment Act, issued 15 October 1998. As to interviews with

journalists see also *R v Secretary of State for the Home Department, ex p Simms* [1999] 3 All ER 400, [1999] 3 WLR 328, HL; and PARA 571 note 11 post.

7 Prison Rules 1999, SI 1999/728, r 34(1). The power cannot be exercised so as to restrict prisoners' rights to communicate to an extent that is disproportionate to the attainment of one of the identified purposes: see *R v Secretary of State for the Home Department, ex p Leech* [1994] QB 198, [1993] 4 All ER 539, CA.

8 Prison Rules 1999, SI 1999/728, r 34(3). This provision is subject to the Prison Act 1952 s 6 (as amended) (Boards of Visitors), s 9 (chaplain): see the Prison Rules 1999, SI 1999/728, r 34(3). As to privileges see PARA 568 ante.

9 Eg in relation to communications with legal advisers (see *ibid* rr 38, 39; the text and note 15 *infra*; and PARAS 606-607 post).

10 *Ibid* r 34(4). See also PARA 570 post.

11 *Ibid* r 35(3). As to personal letters see PARA 570 post; and as to visits see PARA 571 post.

12 See *ibid* r 35(6); and PARAS 570-571 post. As to the Board of Visitors see PARAS 511-513 ante.

13 *Ibid* r 35(7).

14 *Ibid* r 37.

15 See *ibid* rr 38, 39; and PARAS 606-607 post.

16 See *ibid* r 36; and PARA 591 post.

17 See *ibid* r 35(9).

UPDATE

569 Contact with persons outside generally

NOTE 1--See *R (on the application of Banks) v Governor of Wakefield Prison* [2001] EWHC 917 (Admin), [2002] 1 FCR 445 (policy restricting visits by child relatives, other than children or siblings, to prisoners presenting potential risk to children did not breach SI 1999/728 r 4(1)).

TEXT AND NOTES 5-10--SI 1999/728 r 34 substituted: SI 2000/2641.

Any restriction or condition on communications (see NOTE 6) may only be imposed if the Secretary of State considers that (1) it does not interfere with the convention rights of any person; or (2)(a) it is necessary on grounds specified in SI 1999/728 r 34(3); (b) reliance on the grounds is compatible with the convention right to be interfered with; and (c) the restriction or condition is proportionate to what is sought to be achieved: r 34(2). The grounds specified in r 34(3) are (i) the interests of national security, (ii) the prevention, detection, investigation or prosecution of crime, (iii) the interests of public safety, (iv) securing or maintaining prison security or good order and discipline in prison, (v) the protection of health or morals, (vi) the protection of the reputation of others, (vii) maintaining the authority and impartiality of the judiciary, or (viii) the protection of the rights and freedoms of any person. References to the convention rights are to the convention rights within the meaning of the Human Rights Act 1998 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 104A.1): SI 1999/728 r 34(8)(c). See *R (on the application of Hirst) v Secretary of State for the Home Department* [2002] EWHC 602 (Admin), [2002] 3 WLR 2929 (blanket ban on media interviews contravened European Convention on Human Rights art 15).

NOTE 6--Definitions of 'communications' and 'telecommunications apparatus' omitted from SI 1999/728 r 34 (as substituted: see TEXT AND NOTES 5-10). 'Communication' includes any written or drawn communication from a prisoner to any other person,

whether intended to be transmitted by means of a postal service or not, and any communication from a prisoner to any other person transmitted by means of a telecommunications system: r 2(1) (definition added by SI 2000/2641). References to communications include references to communications during visits: SI 1999/728 r 34(8)(a).

NOTE 7--See also *Potter v Scottish Ministers* [2007] CSOH 56, (2007) Times, 4 April (preceding prisoner's telephone call with message that call made from prison was without lawful authority and interfered with prisoner's right to private and family life under European Convention on Human Rights art 8).

NOTE 8--SI 1999/728 r 34(3) now r 34(1). Reference to the Prison Act 1952 s 9 is now to s 19 (right of justice of the peace to visit prison): SI 1999/728 r 34(1) (as substituted: see TEXT AND NOTES 5-10).

The boards appointed under the Prison Act 1952 s 6 (boards of visitors) are renamed as independent monitoring boards: Offender Management Act 2007 s 26(1).

TEXT AND NOTE 10--Replaced by SI 1999/728 rr 35A, 35B (both added by SI 2000/2641; SI 1999/728 r 35A(2A) added by SI 2009/3082).

The Secretary of State may give directions to any governor concerning the interception in a prison of any communication by any prisoner or class of prisoners if the Secretary of State considers that such directions are necessary on grounds specified in SI 1999/728 r 35A(4) and proportionate to what is sought to be achieved: r 35A(1). Subject to any directions given by the Secretary of State, the governor may make arrangements for any communication by a prisoner or class of prisoners to be intercepted in a prison by an officer or an employee authorised by the governor if he considers that the arrangements are necessary on grounds specified in r 35A(4) and proportionate to what is sought to be achieved: r 35A(2). The governor may not make arrangements for interception of any communication between a prisoner and the prisoner's legal adviser, or any body or organisation with which the Secretary of State has made arrangements for the confidential handling of correspondence, unless the governor has reasonable cause to believe that the communication is being made with the intention of furthering a criminal purpose and unless authorised by the chief operating officer of the prison service: r 35A(2A). Any communication by a prisoner may, during the course of its transmission in a prison, be terminated by an officer or an authorised employee if he considers that to terminate the communication is necessary on grounds specified in r 35A(4) and proportionate to what is sought to be achieved: r 35A(3). The grounds specified in r 35A(4) are (1) the interests of national security, (2) the prevention, detection, investigation or prosecution of crime, (3) the interests of public safety, (4) securing or maintaining prison security or good order and discipline in prison, (5) the protection of health or morals, and (6) the protection of the reputation of others. Head (6) does not apply to the interception of a communication by means of a telecommunications system in a prison or the disclosure or retention of intercepted material: r 35A(5). 'Intercepted material' means the contents of any communication intercepted pursuant to SI 1999/728: r 2(1) (added by SI 2000/2641).

The governor may arrange for a permanent log to be kept of all communications by or to a prisoner: r 35B(1). The log may include, in relation to a communication by means of a telecommunications system in a prison, a record of the destination, duration and cost of the communication and, in relation to any written or drawn communication, a record of the sender and addressee of the communication: r 35B(2).

The governor may not disclose to any person who is not an officer of a prison or of the Secretary of State or an employee of the prison authorised by the governor for the purposes of r 35C any intercepted material, information retained pursuant to r 35B or material obtained by means of an overt closed circuit television system (see PARA

595A) used during a visit unless (a) he considers that such disclosure is necessary on grounds specified in r 35A(4) (see heads (1)-(6)) and proportionate to what he seeks to achieve by the disclosure; or (b)(i) in the case of intercepted material or material obtained by means of an overt closed circuit television system used during a visit, all parties to the communication or visit consent to the disclosure, or (ii) in the case of information retained pursuant to r 35B, the prisoner to whose communication the information relates, consents to the disclosure: r 35C.

The governor must not retain any intercepted material or material obtained by means of an overt closed circuit television system used during a visit for a period longer than three months beginning with the day on which the material was intercepted or obtained unless he is satisfied that continued retention of it is necessary on grounds specified in r 35A(4) and proportionate to what he seeks to achieve by the continued retention: r 35D(1). Where such material is retained for longer than three months the governor must review its continued retention at periodic intervals, which must take place not more than three months apart, until such time as it is no longer held by him: r 35D(2), (3). If the governor, on such a review or at any other time, is not satisfied that the continued retention of the material satisfies the requirements of r 35D(1), he must arrange for the material to be destroyed: r 35D(4).

See *R (on the application of Szuluk) v Governor of Full Sutton Prison* [2004] EWCA Civ 1426, (2004) Independent, 4 November (policy of reading letters sent by prisoner to his medical consultant did not infringe his right to respect for correspondence under the European Convention on Human Rights art 8).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(4) PRISONERS' RIGHTS AND PRIVILEGES/570. Personal letters.

570. Personal letters.

Convicted prisoners are entitled to send and receive a personal letter on reception into a prison and thereafter once a week¹, the postage on the outgoing letter being paid from public funds². A prisoner entitled to a visit may be allowed by the governor to send and to receive a letter instead³.

Every personal letter to or from a prisoner may be read, logged, recorded or examined by the governor or an officer deputed by him and the governor may stop any letter or communication that is objectionable or of inordinate length⁴. In practice routine reading only takes place in respect of prisoners who are (1) detained in maximum security establishments; (2) from such an establishment, but temporarily transferred elsewhere; (3) categorised Category A or being considered for Category A; (4) detained in separate units designed to hold Category A prisoners; and (5) on the escape list⁵. A prisoner must be informed if an outgoing letter has been stopped so that he can rewrite it⁶.

In practice, prisoners may correspond with any person or organisation⁷, unless:

- 55 (a) that person, or where he is a minor, the person or authority having parental responsibility, has requested in writing to the prison authorities that further letters should not be sent in which case the governor has a discretion to prevent further letters being sent⁸;
- 56 (b) that person is both a minor and a prisoner, and the person who would have parental responsibility if the minor was not in prison requests in writing the stopping of correspondence, in which case the governor has a discretion to stop any correspondence⁹;
- 57 (c) that person has served a custodial sentence and the governor believes that the correspondence would seriously impede the rehabilitation of either¹⁰;
- 58 (d) that person is a victim of the prisoner's offences who or whose family the governor considers would be caused undue distress¹¹;
- 59 (e) the governor has reason to believe that the correspondent is planning or engaged in activities which present a genuine and serious threat to the security or good order of the establishment¹².

General correspondence¹³ may not contain any of the following matters:

- 60 (i) material which contains messages which are grossly indecent or offensive, a threat, or information which is known or believed to be false, provided that it appears that the writer's intention is to cause distress or anxiety to the recipient or any other person;
- 61 (ii) plans or material which would tend to assist or encourage the commission of any disciplinary offence or criminal offence, including attempts to defeat the ends of justice by suggesting the concoction or suppression of evidence;
- 62 (iii) escape plans or material which if allowed would jeopardise the security of a prison;
- 63 (iv) material which would jeopardise national security;
- 64 (v) descriptions of the making or use of any weapon, explosive, poison or other destructive device;
- 65 (vi) obscure or coded messages which are not readily intelligible or decipherable;

- 66 (vii) material unlawful under the Post Office Act 1953 by reason of its indecency or obscenity¹⁴;
- 67 (viii) material which would create a clear threat or present danger of violence or physical harm to any person, including incitement to racial hatred;
- 68 (ix) material which is intended for publication or for use by radio or television (or which, if sent, would be likely to be published or broadcast) if it (A) is for publication in return for payment (unless the inmate is unconvicted); (B) is likely to appear in a publication associated with a person or organisation to which the inmate may not write on grounds of security or good order; (C) is about the inmate's own crime or past offences or those of others, except where it consists of serious representations about conviction or sentence or forms part of serious comment about crime, the processes of justice or the penal system; or (D) refers to individual inmates or members of staff in such a way that they might be identified; and
- 69 (x) in the case of a convicted inmate, material constituting the conduct of a business activity outside a number of business exceptions¹⁵.

Inmates have the right to communicate with members of Parliament, it being a fundamental principle that contact between a member of Parliament and those he has been elected to represent should be allowed freely subject only to such conditions as are essential to the preservation of the security and good order of the establishment¹⁶.

Letters to a member of Parliament may be read and any matter which might prejudice the security, good order or discipline of the establishment are brought to the attention of the governor, but letters are only stopped if they are indecent or obscene¹⁷.

Letters to a member of the European Parliament may be read and are subject to the same restrictions on their contents as general letters¹⁸.

1 Prison Rules 1999, SI 1999/728, r 35(2)(a). This is a statutory minimum. The governor may allow a prisoner an additional letter as a privilege or where necessary for his welfare or that of his family; the Board of Visitors may allow a prisoner an additional letter in special circumstances; and the Secretary of State may allow additional letters in relation to any prisoner or class of prisoners: see r 35(3), (6), (7); and PARA 569 ante. As to privileges see r 8; and PARA 568 ante. As to Boards of Visitors see PARAS 511-513 ante. As to the Secretary of State see PARA 505 ante. As to personal letters from and to unconvicted prisoners see r 35(1); and PARA 697 post.

In practice, unless detained in prisons in which personal correspondence is routinely read, prisoners are allowed as a privilege to send as many further letters as they choose, the postage being paid out of their earnings or private cash: Prison Service Standing Order 5B 6(2), 16(2). In those prisons where correspondence is routinely read, prisoners are allowed as a privilege to send at least one additional letter and as many more as the governor considers practicable bearing in mind the staff resources available to examine the correspondence: Standing Orders 5B, 6A. Over and above these quotas, allowance is made for letters to be sent for special reasons, the postage generally being paid from earnings or private cash: Standing Order 5B.

As to property received in the post see PARA 567 ante.

2 Standing Order 5B 16(1).

3 Prison Rules 1999, SI 1999/728, r 35(4). See also PARA 571 post.

4 See *ibid* r 34(4); and PARA 569 ante. There is no power to routinely read correspondence between prisoners and their legal advisers or to censor it on such grounds: *R v Secretary of State for the Home Department, ex p Leech* [1994] QB 198, [1993] 4 All ER 539, CA. As to correspondence with lawyers see PARAS 606-607 post.

In practice prisoners' letters are not censored on grounds of length, save in establishments where routine reading is in force, in which the governors have a discretion to set a limit to the length of letters of not less than four sides of A5 paper: Prison Service Standing Order 5B 9, 10.

5 Prison Service Standing Order 5B 32(2). As to Category A prisoners see PARA 536 ante.

6 Prison Service Standing Order 5B 40.

7 Prison Service Standing Order 5B 19.

8 Prison Service Standing Order 5B 20, 21.

9 Prison Service Standing Order 5B 21.

10 Prison Service Standing Order 5B 24.

11 Prison Service Standing Order 5B 25. The governor has no power to stop prisoners communicating with victims who are close relatives (see the Prison Service Standing Order 5B 3), or where the victim has already written to the prisoner or the prisoner is unconvicted: Prison Service Standing Order 5B 25. As to unconvicted prisoners see PARA 694 et seq post.

12 Prison Service Standing Order 5B 26.

13 le correspondence with family, friends and other organisations.

14 See the Post Office Act 1953 s 11(1)(b), (c); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 765.

15 Prison Service Standing Order 5B 34. Standing Order 5B was introduced in December 1981 (Standing Order Amendment No 326 (1981)) and resulted in a significant relaxing of the restrictions following the report of the European Commission of Human Rights in Application 5947/72 *Silver v United Kingdom* (1980) 3 EHRR 475, EComHR. The restrictions have been further relaxed following the decision in *R v Secretary of State for the Home Department, ex p Anderson* [1984] QB 778, [1984] 1 All ER 920, DC.

16 Prison Service Standing Order 5D 1.

17 Prison Service Standing Order 5D 4, 5. The special facilities described here are not afforded in relation to members of the European Parliament (see the text and note 19 infra), since they have no standing in respect of exclusively domestic United Kingdom matters: Prison Service Standing Order 5D 10, 11.

18 Prison Service Standing Order 5D 11. As to correspondence with the European Court of Human Rights see PARAS 606-607 post.

UPDATE

570 Personal letters

TEXT AND NOTE 4--SI 1999/728 r 34(4) replaced by rr 35A, 35B: see PARA 569.

NOTE 4--A policy requiring the inspection of a prisoner's cell in his absence, for the purpose of examining any legal correspondence, is an excessive infringement of the prisoner's basic rights: *R v Secretary of State for the Home Department, ex p Daly* [2001] UKHL 26, [2001] 3 All ER 433.

NOTE 15--See *R (on the application of Nilsen) v Governor of Full Sutton Prison* [2004] EWCA Civ 1540, [2005] 1 WLR 1028 (head (ix)(c) applied so that prisoner convicted of multiple murders could not seek publication of autobiography in which he justified his crimes; extent to which prisoner's freedom of expression was restricted was justified).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(4) PRISONERS' RIGHTS AND PRIVILEGES/571. Visits.

571. Visits.

Convicted prisoners are entitled to receive a visit twice in every period of four weeks but only once in every such period if the Secretary of State¹ so directs². The governor may allow prisoners to send or receive a letter instead³. The governor may defer a prisoner's right to a visit until any period of cellular confinement has expired⁴. The Board of Visitors may direct that a visit may extend beyond the normal duration⁵. Generally a prisoner is not entitled to receive a visit from any person other than a relative or friend except with the leave of the Secretary of State⁶. The Secretary of State may, with a view to securing discipline and good order or the prevention of crime or in the interests of any persons, impose prohibitions on visits by a person to a prison or to a prisoner in a prison for such periods as he considers necessary⁷. A prisoner is not entitled to receive a visit from any person in respect of whom there is such a prohibition in place⁸.

In practice particular emphasis is placed on visits from close relatives (namely spouses or persons with whom prisoners were living as man and wife before imprisonment, parents or those in loco parentis, children or children to whom prisoners are in loco parentis, brothers, sisters and genuine fiancés or fiancées), and such visitors should only be prohibited in exceptional circumstances⁹. Where prisoners are identified as presenting a risk to children, visits from children other than their own offspring or siblings should be refused unless the governor exceptionally believes that it is in the best interests of the child to visit the prisoner¹⁰. Visits from journalists in a professional capacity are generally prohibited although the governor may exceptionally allow them¹¹.

The Secretary of State may require that any visit, or class of visits, is to be held in facilities which include special features restricting or preventing physical contact between a prisoner and a visitor¹². Visits must take place within the sight and hearing of an officer unless the Secretary of State otherwise directs¹³. The Secretary of State may give directions, generally or in relation to any visit or class of visits, concerning the day and times when prisoners may be visited¹⁴.

Any person or vehicle entering or leaving a prison may be stopped, examined and searched¹⁵, and any such search must be conducted in as seemly manner as is consistent with discovering anything concealed¹⁶. The governor may direct the removal of any person who does not leave when requested to do so¹⁷.

1 As to the Secretary of State see PARA 505 ante.

2 Prison Rules 1999, SI 1999/728, r 35(2)(b). This is the minimum permitted. The governor may allow a prisoner an additional visit as a privilege or where necessary for his welfare or that of his family; the Board of Visitors may allow a prisoner an additional visit in special circumstances; and the Secretary of State may allow additional visits in relation to any prisoner or class of prisoners: see r 35(3), (6), (7); and PARA 569 ante. As to privileges see r 8; and PARA 568 ante. As to Boards of Visitors see PARAS 511-513 ante. As to visits to unconvicted prisoners see r 35(1); and PARA 967 post.

It is not a violation of a prisoner's right to family life (ie under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 8: see PARA 504 ante) to secure as a minimum only one visit once a month, nor to transfer a prisoner to another prison where fewer visits are permitted as a privilege: Application 9659/82 *Boyle and Rice v United Kingdom* (1988) 10 EHRR 425, ECtHR.

In practice, additional visits are allowed for special purposes or with particular categories of persons, eg to help prisoners immediately after conviction to complete necessary arrangements relating to private business affairs, visits by legal advisers (see PARAS 606-607 post), visits from probation officers, members of Parliament, priests and ministers, consular officers, the Prisons Ombudsman or a member of his staff, or police officers: Prison

Service Standing Order 5A 5, 6. Prisoners are allowed to accumulate between 3 and 26 visits and apply to take them at the prison at which they are detained or to be temporarily transferred to another prison that is suitable for their age, security classification and gender: see the Prison Service Standing Order 5A 11-18. As to contact with prison visitors see PARA 587 post.

3 See the Prison Rules 1999, SI 1999/728, r 35(4). See also PARA 570 ante.

4 See *ibid* r 35(5).

5 See *ibid* r 35(6); and PARA 569 ante.

6 See *ibid* r 35(8)(b). See also r 34(3); and PARA 569 ante. As to access to legal advice see PARAS 606-607 post. It would appear that where a prospective visitor is refused permission to visit, he does not have standing to challenge that refusal in proceedings for judicial review; the challenge must be brought by the prisoner: *R v Governor of HMP Holloway, ex p Ogilvy* (27 June 1997, unreported), DC.

7 Prison Rules 1999, SI 1999/728, r 73(1). This power does not authorise the Secretary of State to prohibit visits by a member of the Board of Visitors or a justice of the peace; and does not prevent a visit by a prisoner's legal adviser for the purpose of an interview under r 38 (see PARAS 606-607 post) or a visit allowed by the Board of Visitors under r 35(6) (see the text and note 5 supra; and PARA 569 ante): see r 73(2). See also the Prison Service Standing Order 5A 32.

8 Prison Rules 1999, SI 1999/728, r 35(8)(a). See also Prison Order 3610, Measures to deal with visitors and prisoners who smuggle drugs through visits, issued 9 March 1999 (under which, as from April 1999, any visitor caught smuggling drugs into prison faces an automatic ban from making further visits for a period of at least three months, and the resumption of visits will be subject to rigorous security controls). Prisoners previously found in possession of drugs will face regular drug tests and searches.

9 Prison Service Standing Order 5A 30, 31. Exceptional circumstances would clearly be met where such persons were found smuggling drugs or other unauthorised articles into prison.

10 Prison Service Standing Order 5A 33(3). See also Prison Order 4400, Prisoner Communications, Chapter 1: Child Protection Measures, issued 21 July 1998.

11 Prison Service Standing Order 5A 37, 37A. See *R v Secretary of State for the Home Department, ex p Simms* [1999] 3 All ER 400, [1999] 3 WLR 328, HL, in which it was held that although interviews of prisoners by journalists require more careful control and regulation than visits by relatives and friends, a prisoner has a right to seek through oral interviews to persuade a journalist to investigate the safety of the prisoner's conviction and to publicise his findings in an effort to gain access to justice for the prisoner.

12 Prison Rules 1999, SI 1999/728, r 34(2). In practice, closed visits involve the separation of a prisoner from his visitor by glass or a wire grille. Such restrictions can be imposed where security or control considerations so require. This sometimes occurs where the prisoner is classified as exceptional risk (see *R v Secretary of State for the Home Department, ex p O'Dhuibhir* (1997) Independent, 6 March, [1997] COD 315, CA), or where it is suspected that unauthorised items such as drugs have been smuggled into the prison (see the Prison Service Standing Order 5A 24(2)). Where a visitor has smuggled drugs into the prison but the governor has exceptionally determined not to ban the visitor from visiting a prisoner (see Prison Order 3610, 3(ii)), all visits for at least the next six months must be held in closed non-contact conditions: Prison Order 3610, 3(iii).

13 See the Prison Rules 1999, SI 1999/728, r 34(5), (6). In practice if the visitor is a priest, minister or member of Parliament, the visit usually takes place in the sight but not hearing of an officer: Prison Service Standing Order 5A 38.

14 Prison Rules 1999, SI 1999/728, r 34(7).

15 *Ibid* r 71(1). As to searching of prisoners see PARA 590 post.

16 *Ibid* r 71(1).

17 *Ibid* r 71(2).

UPDATE

571 Visits

TEXT AND NOTES 1, 2--A prisoner serving a sentence of imprisonment to which an intermittent custody order relates is entitled to receive a visit only where the governor considers that desirable having regard to the extent to which he has been unable to meet with his friends and family in the periods during which he has been temporarily released on licence: SI 1999/728 r 35(2A) (added by SI 2003/3301).

TEXT AND NOTES 5, 7--Reference to Board of Visitors now to independent monitoring board (see PARA 511): SI 1999/728 rr 35(6), 73(2) (amended by SI 2008/597).

TEXT AND NOTE 7--For 'with a view ... impose prohibitions on' read 'prohibit': SI 1999/728 r 73(1) (substituted by SI 2000/2641). The Secretary of State must consider such a prohibition necessary on grounds specified in SI 1999/728 r 35A(4) (see PARA 569) and proportionate to what is sought to be achieved by the prohibition: r 73(1).

NOTE 12--SI 1999/728 r 34(2) now r 34(4) (see PARA 569).

TEXT AND NOTE 13--Now refers to an officer or authorised employee: *ibid* r 34(5), (6) (see PARA 569). A visit is taken to take place within the sight of an officer or authorised employee if it can be seen by an officer or authorised employee by means of an overt closed circuit television system (see PARA 595A): r 34(5).

TEXT AND NOTES 15, 16--Replaced. Any person or vehicle entering or leaving a prison may be stopped, examined and searched and in addition any such person may be photographed, fingerprinted or required to submit to other physical measurement: SI 1999/728 r 71(1) (r 71(1) substituted, r 71(1A) added by SI 2005/869). Any such search of a person must be carried out in as seemly a manner as is consistent with discovering anything concealed about the person or their belongings: SI 1999/728 r 71(1A).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(4) PRISONERS' RIGHTS AND PRIVILEGES/572. Complaints and grievances.

572. Complaints and grievances.

Prisoners must be provided, as soon as possible after their reception into prison, and in any case within 24 hours, with information in writing about the proper means of making requests and complaints¹. A request or complaint to the governor or Board of Visitors² relating to a prisoner's imprisonment must be made orally or in writing by that prisoner³. It must be made within three months of the matter at issue coming to light⁴. The governor must hear requests and complaints by prisoners on every day⁵. A written request or complaint may be made in confidence⁶.

The Board of Visitors and any member of the board must hear any request or complaint which a prisoner wishes to make⁷. Prisoners are also entitled to petition the Queen, the Secretary of State, and Parliament⁸. Oral requests or complaints are dealt with on the prisoner's wing or landing and should be heard privately in the wing office⁹. Complaints dealt with in the prison should receive a reply within seven days or where this is not possible, an interim reply¹⁰. A number of subjects are reserved to be dealt with at Prison Service Headquarters, though staff will be consulted¹¹. Prisoners who are not satisfied with the response of an establishment may appeal to Prison Service Headquarters¹². Replies should be given promptly and at the latest within six weeks of a request, complaint or appeal¹³. Where a full reply cannot be given within six weeks an interim reply must be sent within that time¹⁴.

Prisoners who have failed to obtain a satisfactory outcome from the request and complaints procedure may apply to the Prisons Ombudsman for the further investigation of their complaint¹⁵.

The jurisdiction of the Parliamentary Commissioner for Administration extends to the Prison Service¹⁶. A complaint by a person who claims to have suffered injustice in consequence of maladministration may be referred to the Parliamentary Commissioner by a member of Parliament¹⁷.

Prisoners may also submit applications to the European Commission of Human Rights in Strasbourg claiming to be the victim of a violation of one of the rights set out in the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)¹⁸. The Convention requires the exhaustion of domestic remedies¹⁹ before an application can be admitted and requires the application to be filed within six months of the final domestic decision²⁰.

1 See the Prison Rules 1999, SI 1999/728, r 10(1); and PARA 547 ante.

2 As to Boards of Visitors see PARAS 511-513 ante.

3 Prison Rules 1999, SI 1999/728, r 11(1).

4 Prison Service Instruction 30/1997.

5 Prison Rules 1999, SI 1999/728, r 11(2). In practice, no requests or complaints are dealt with on Sundays or bank holidays, and the function of hearing requests and complaints is delegated by the governor to another officer: see the Prison Service Standing Order 5C; and the *Staff Manual on Prisoners' Requests/Complaints Procedures*. As to the power of a governor to delegate see the Prison Rules 1999, SI 1999/728, r 81; and PARA 522 ante.

6 Ibid r 11(3). Prisoners wishing to raise confidential matters may do so by placing their request or complaint in a sealed envelope upon which they should write the reason that the matter is to be treated as confidential. The prisoner should address the communication to the governor, chairman of the Board of Visitors, or area manager. If the recipient considers that another person or body is better equipped to deal with it he may pass it

on: see the Prison Service Standing Order 5C; and the *Staff Manual on Prisoners' Requests/Complaints Procedures*.

7 See *ibid* r 78(1). See also PARA 513 ante. Where a prisoner has asked to see a board member the governor must ensure that that member is told of the request expeditiously: Prison Service Standing Order 5C 16.

8 Prison Service Standing Order 5C 1, 17, 18. The authority for these practices derives from the Bill of Rights (1688 or 1689), which states that 'it is the right of the subjects to petition the King and all commitments and prosecutions for such petitioning are illegal': see s 1; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 419. As to the Secretary of State see PARA 505 ante.

9 *Staff Manual on Prisoners' Requests/Complaints Procedures* Pt III 3.1.4.

10 *Staff Manual on Prisoners' Requests/Complaints Procedures* Pt III 3.2.25.

11 *Staff Manual on Prisoners' Requests/Complaints Procedures* Pt III 3.4. Reserved subjects are those which the governor has no legal power to decide upon and include appeals against adjudications (see PARA 598 et seq post); allegations against the governor himself; early release and parole (see PARA 612 et seq post); certain matters connected with prisoners' status as Category A (see PARA 537 ante) or life sentence prisoners; decisions concerned with a mother's reception onto, removal from or treatment on a mother and baby unit (see PARA 634 post); repatriation (see PARAS 555-561 ante); and transfers (see PARAS 548-554 ante): see *Staff Manual on Prisoners' Requests/Complaints Procedures* Pt III 3.4; and Prison Service Standing Order 5C.

12 *Staff Manual on Prisoners' Requests/Complaints Procedures* Pt III 3.4.19.

13 *Staff Manual on Prisoners' Requests/Complaints Procedures* Pt III 3.2.25(2).

14 *Staff Manual on Prisoners' Requests/Complaints Procedures* Pt III 3.2.25(2).

15 As to the Prisons Ombudsman see PARA 509 ante.

16 See the Parliamentary Commissioner Act 1967 s 4(1), Sch 2 (as substituted and amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 43. The Prison Service is liable to investigation as an executive agency of the Home Office: see PARA 507 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 466-470.

17 See *ibid* s 5(1); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41. As to prisoners' letters to members of Parliament see PARA 570 ante.

18 See the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 25(1); para 504 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 172. The government undertakes not to hinder in any way the effective exercise of the right of individual petition: see Art 25(1). As to communication with legal advisers and courts see PARAS 606-607 post.

As from a day to be appointed, certain rights and freedoms set out in the Convention are incorporated into domestic law (see the Human Rights Act 1998 s 1, Sch 1; and PARA 504 ante), and will be enforceable in domestic courts.

19 Prisoners' rights to complain by way of request or complaint to the governor, the Board of Visitors or area manager, or to the Secretary of State, Prisons Ombudsman or Parliamentary Commissioner for Administration are not 'effective' remedies within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 13: *Silver v United Kingdom* (1983) 5 EHRR 347, ECtHR. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 163.

20 See the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 26; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 173.

UPDATE

572 Complaints and grievances

TEXT AND NOTES 2, 7--References to Board of Visitors now to independent monitoring board (see PARA 511): SI 1999/728 regs 11(1), 78(1) (amended by SI 2008/597).

NOTE 7--See *R (on the application of H) v Secretary of State for the Home Department* [2008] All ER (D) 37 (Sep) (refusal to hold oral hearing, to give in-depth consideration to prisoner's request for recategorisation, procedurally unfair).

NOTE 18--Day appointed 2 October 2000: SI 2000/1851.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(5) ACCOMMODATION, ACTIVITIES AND SERVICE/(i) Accommodation, Food and Clothing/573. Accommodation and bedding.

(5) ACCOMMODATION, ACTIVITIES AND SERVICE

(i) Accommodation, Food and Clothing

573. Accommodation and bedding.

The Secretary of State¹ must satisfy himself from time to time that in every prison sufficient accommodation is provided for all prisoners². No cell is to be used for the confinement of a prisoner unless an officer of the Secretary of State³, not being an officer of a prison⁴, has certified that its size, lighting, heating, ventilation and fittings are adequate for health and that it allows the prisoner to communicate at any time with a prison officer⁵. A certificate may limit the period for which a prisoner may be separately confined in the cell and the number of hours a day during which a prisoner may be employed in it⁶. The certificate must also specify the maximum number of prisoners who may sleep or be confined at one time in the room or cell, that number not to be exceeded without the leave of the Secretary of State⁷. An officer of the Secretary of State may withdraw a certificate if in his opinion the conditions of the cell are no longer as stated in the certificate⁸. Prisons do not need a fire certificate⁹.

Each prisoner must be provided with a separate bed and with separate bedding adequate for warmth and health¹⁰.

1 As to the Secretary of State see PARA 505 ante.

2 Prison Act 1952 s 14(1).

3 I.e. appointed under s 3(1) (as amended) (see PARA 505 ante).

4 For these purposes, in relation to a contracted-out prison, the reference to a prison officer is to be construed as a reference to a prisoner custody officer performing custodial duties at the prison or to a prison officer who is temporarily attached to the prison: Criminal Justice Act 1991 s 87(1), (7) (amended by the Criminal Justice and Public Order Act 1994 s 97(5)). As to the contracting out of prisons see PARAS 532-535 ante. As to prisoner custody officers see PARA 528 ante.

In relation to contracted-out functions at a directly managed prison, the reference to a prison officer is to be construed as including a reference to a prisoner custody officer performing custodial duties in pursuance of a contract: Criminal Justice Act 1991 s 88A(3)(b) (added by the Criminal Justice and Public Order Act 1994 s 99). For the meaning of 'directly managed prison' see PARA 529 note 14 ante. The reference to 'custodial duties' at a directly managed prison includes a reference to the performance of such duties for the purposes of, or for purposes connected with, such a prison: see the Criminal Justice Act 1991 s 88A(4) (as added); and PARA 529 ante.

5 Prison Act 1952 s 14(2) (s 14(2), (4), (5) amended by the Prison Commissioners Dissolution Order 1963, SI 1963/597, art 3(2), Sch 1). The certificate must identify the cell to which it relates by a number or mark, which must be conspicuously marked on the cell; and if the number or mark is changed without the consent of the Secretary of State's officer, the certificate ceases to have effect: Prison Act 1952 s 14(4) (as so amended). No room or cell may be used as sleeping accommodation unless so certified: see the Prison Rules 1999, SI 1999/728, r 26(1). As to certification see the Prison Service Instruction to Governors 42/1994.

6 See the Prison Act 1952 s 14(3). Section 14 (as amended) is entirely a health and welfare provision, and s 14(3) is in no way authority for indefinite confinement in a cell where a certificate imposes no restrictions: *Williams v Home Office (No 2)* [1981] 1 All ER 1211 at 1228 per Tudor Evans J; affd on other grounds [1982] 2 All ER 564, CA.

7 See the Prison Rules 1999, SI 1999/728, r 26(2). In practice, many prisons provide dormitory accommodation for Category C prisoners. Cf the European Prison Rules (see PARA 504 ante), which indicate that at night prisoners will normally be accommodated in single cells except where it is considered that there are advantages in sharing accommodation with other prisoners: see r 14(1). As to security categorisation see PARA 537 ante.

8 Prison Act 1952 s 14(5) (as amended: see note 5 supra). No action for false imprisonment lies in respect of intolerable conditions of detention, though where those conditions are injurious to health an action may lie in negligence: *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1992] 1 AC 58, sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733, HL (overruling *Middleweek v Chief Constable of Merseyside* [1992] 1 AC 179n, [1990] 3 All ER 662, CA). See also PARA 566 ante.

The conditions of detention may also be such as to amount to cruel and unusual punishment contrary to the Bill of Rights (1688 or 1689): *R v Secretary of State for the Home Department, ex p Herbage (No 2)* [1987] QB 1077, [1987] 1 All ER 324, CA; but see also *Williams v Home Office (No 2)* [1981] 1 All ER 1211; affd on other grounds [1982] 2 All ER 564, CA. Conditions may also violate the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 3 (see PARA 504 ante). For the strict standards that apply under Art 3 in relation to prisoners see eg Applications 7572/76, 7586/76, 7587/76 *Ensslin, Baader and Raspe v Germany* 14 DR 64 (1978), EComHR; Application 10263/83 *v Denmark* (1985) 8 EHRR 60, EComHR; Application 9907/82 *M v United Kingdom* 30 DR 130, EComHR; *McFeely v United Kingdom* (1981) 3 EHRR 161, EComHR.

9 Fire Precautions Act 1971 s 40(2)(a) (amended by the Criminal Justice Act 1982 s 77, Sch 14 para 29). As to health and safety at work see PARA 579 post.

10 Prison Rules 1999, SI 1999/728, r 27. See also the Prison Service Standing Order 14, which sets out further minimum standards (eg that bedding should be regularly laundered).

UPDATE

573 Accommodation and bedding

NOTE 9--1971 Act replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(5) ACCOMMODATION, ACTIVITIES AND SERVICE/(i) Accommodation, Food and Clothing/574. Food, intoxicating liquor and tobacco.

574. Food, intoxicating liquor and tobacco.

The food provided in prisons must be wholesome, nutritious, well prepared and served, reasonably varied and sufficient in quantity¹. Except as authorised by the medical officer or a registered medical practitioner working within the prison², no prisoner may be allowed to have any food other than that ordinarily provided³. The medical officer, a registered medical practitioner working within the prison or any person deemed by the governor to be competent must from time to time inspect the food both before and after it is cooked and report any deficiency or defect to the governor⁴. The Board of Visitors must arrange for the food to be inspected by a member of the board at frequent intervals⁵.

No prisoner may have any intoxicating liquor except under the written order of the medical officer or a registered medical practitioner working within the prison, specifying the quantity and the name of the prisoner⁶.

No prisoner is allowed to smoke or to have any tobacco except as a privilege and in accordance with any orders of the governor⁷.

1 Prison Rules 1999, SI 1999/728, r 24(2). For these purposes, 'food' includes drink: r 24(4). In practice, vegetarian meals are provided for prisoners who express a personal preference; vegan diets to those who can demonstrate a commitment to the principles of veganism; and special diets to prisoners who are members of religious organisations and can demonstrate an adherence to the dietary laws of their religion: Prison Service Circular Instruction 37/1991. During religious festivals recognised religious leaders may be permitted to provide special food for prisoners: Prison Service Race Relations Manual, 6.6.

2 I.e. a medical practitioner such as is mentioned in the Prison Rules 1999, SI 1999/728, r 20(3) (see PARA 580 post): see r 24(1). As to the medical officer see PARA 580 post.

3 See *ibid* r 24(1). This provision is subject to any directions of the Secretary of State: see r 24(1). As to the Secretary of State see PARA 505 ante. In all prisons, prisoners are allowed to purchase items of food from the canteen out of their earnings: Standing Order 4 20-21.

4 *Ibid* r 24(3).

5 See *ibid* r 78(2); and PARA 513 ante. In practice, the catering facilities are inspected by regional catering managers and independently by Home Office health and safety officers in accordance with the standards laid down in the Food Hygiene (General) Regulations 1970, SI 1970/1172 (see FOOD): Prison Service Standing Order 14, 28. The inspection system is subject to at least one unannounced random validation check by an environmental health officer: Prison Service Standing Order 14. As to environmental health officers see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH.

6 Prison Rules 1999, SI 1999/728, r 25(1).

7 *Ibid* r 25(2). As to privileges see r 8; and PARA 568 ante.

UPDATE

574 Food, intoxicating liquor and tobacco

NOTE 1--As to sufficiency of food provided, see *R v Governor of Frankland Prisons, ex p Russell* [2000] 1 WLR 2027 (policy of providing only one meal a day to prisoners in prison segregation unit who refused to wear prison clothing and who, according to

prisons rules, were precluded from leaving their cells to collect their meals, was unlawful).

TEXT AND NOTE 2--Reference to 'the medical officer or a registered medical practitioner' now to 'a health care professional'; reference to SI 1999/728 r 20(3) omitted: SI 1999/728 r 24(1) (amended by SI 2005/3437, SI 2009/3082). 'Health care professional' means a person who is a member of a profession regulated by a body mentioned in the National Health Service Reform and Health Care Professions Act 2002 s 25(3) (see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 294) and who is working within the prison: r 2(1) (definition added by SI 2005/3437; and amended by SI 2009/3082).

TEXT AND NOTE 4--References to 'the medical officer' and 'a registered medical practitioner working within the prison' omitted: SI 1999/728 r 24(3) (amended by SI 2005/3437).

TEXT AND NOTE 6--Words 'except under the written order ... the name of the prisoner' omitted: SI 1999/728 r 25(1) (amended by SI 2005/3437).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(5) ACCOMMODATION, ACTIVITIES AND SERVICE/(i) Accommodation, Food and Clothing/575. Clothing.

575. Clothing.

Convicted prisoners must be provided with clothing adequate for warmth and health in accordance with a scale approved by the Secretary of State¹. Where necessary, suitable protective clothing for use at work must be provided². Only clothing so provided may be worn, except on the directions of the Secretary of State or as a privilege³. Where necessary, a prisoner may be provided with suitable and adequate clothing on his release⁴. Prisoners are entitled to wear clothes which accord with the requirements of their religion as agreed between a relevant religious body and Prison Service Headquarters; and where there is no such agreement the governor should ensure that, subject to the requirements of security and control, prisoners are not discriminated against unfairly⁵.

1 Prison Rules 1999, SI 1999/728, r 23(3). For the meaning of 'convicted prisoner' see PARA 536 note 2 ante. As to special facilities for unconvicted prisoners see PARA 697 post. As to the Secretary of State see PARA 505 ante. See Application 8317/78 *McFeeley v United Kingdom* (1980) 3 EHRR 161, EComHR (conscientious objection to wearing prison clothes no violation of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 8 (see PARA 504 ante)). See also Application 8231/76 *X v United Kingdom* (1982) 5 EHRR 162, EComHR.

2 See the Prison Rules 1999, SI 1999/728, r 23(4). As to health and safety at work see PARA 579 post.

3 See *ibid* r 23(5). As to privileges see r 8; and PARA 568 ante. However, a prisoner taken in custody to court must wear his own clothing or ordinary civilian clothing provided by the governor: see r 40(3).

4 *Ibid* r 23(6).

5 Prison Service Standing Order 7A. As to discrimination within prisons see *Alexander v Home Office* [1988] 2 All ER 118, [1988] 1 WLR 968, CA.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(5) ACCOMMODATION, ACTIVITIES AND SERVICE/(ii) Education and Instruction/576. Education.

(ii) Education and Instruction

576. Education.

Every prisoner able to profit from the education facilities provided at a prison must be encouraged to do so¹. Educational classes must be arranged at every prison² and, subject to any directions of the Secretary of State³, reasonable facilities must be afforded to prisoners who wish to do so to improve their education by distance learning, private study and recreational classes in their spare time⁴. Special attention must be paid to the education and training of prisoners with special educational needs who, if necessary, must be taught within the hours normally allotted to work⁵.

In the case of a prisoner of compulsory school age⁶, arrangements must be made for his participation in education or training courses for at least 15 hours a week within the normal working week⁷.

Educational services are contracted out by the Prison Service⁸. A prison's education officer is provided by the contractor and most of the teaching is performed by part-time teachers.

Prisoners may be temporarily released to enable them to receive instruction or training which cannot reasonably be provided in the prison⁹.

Every prison must have a library and, subject to any directions of the Secretary of State, every prisoner must be allowed to have library books and to exchange them¹⁰.

Prisoners may as a privilege obtain at their own expense books and at least six newspapers and periodicals¹¹.

1 Prison Rules 1999, SI 1999/728, r 32(1).

2 In practice, each prison should, subject to a needs assessment, provide a programme for 50 weeks a year daytime education and 42 weeks evening education. The standards contained in the European Prison Rules, 1987 (see PARA 504 ante) are significantly higher, providing for comprehensive education programmes in every institution (see r 77), for education to be regarded as a regime activity which attracts the same status and remuneration as work (see r 78) and for education programmes to be integrated as far as possible into the educational system of the country (see r 81). Provision should also be made for religious education in groups or classes for those prisoners who wish to attend: Prison Service Standing Order 7A.

3 As to the Secretary of State see PARA 505 ante. As to directions made see the Prison Service Standing Order 7B.

4 See the Prison Rules 1999, SI 1999/728, r 32(2).

5 Ibid r 32(3).

6 I.e. as defined in the Education Act 1996 s 8 (see EDUCATION): see the Prison Rules 1999, SI 1999/728, r 32(4).

7 Ibid r 32(4). See also Prison Order 4200, 'Education and training: the Prison Service education curriculum framework (the core curriculum)', issued 17 July 1997. As to young offenders see PARA 643 et seq post.

8 See the Further and Higher Education Act 1992 s 18; and EDUCATION.

9 See the Prison Rules 1999, SI 1999/728, r 9(2), (3)(c); and PARA 612 post.

10 Ibid r 33. See also Prison Service Standing Order 7B.

11 Prison Service Standing Order 4, 9, 24-27. As to privileges see the Prison Rules 1999, SI 1999/728, r 8; and PARA 568 ante.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(5) ACCOMMODATION, ACTIVITIES AND SERVICE/(iii) Work/577. Work.

(iii) Work

577. Work.

A convicted prisoner is required to do useful work for not more than ten hours a day¹. It is an offence against discipline intentionally to fail to work properly or, being required to work, to refuse to do so². Arrangements must be made to allow prisoners to work, where possible, outside their cells in association with one another³. No prisoner may be set to do work of a kind not authorised by the Secretary of State⁴. No prisoner is to work in the service of another prisoner or an officer, or for the private benefit of any person, without the authority of the Secretary of State⁵. Prisoners may be paid for their work at rates approved by the Secretary of State, either generally or in relation to particular cases⁶.

A prisoner is deemed to be in legal custody while he is working outside the prison in the custody or under the control of a prison officer⁷. A prisoner may be temporarily released to enable him to engage in employment⁸.

1 Prison Rules 1999, SI 1999/728, r 31(1). For the meaning of 'convicted prisoner' see PARA 536 note 2 ante. As to special facilities for unconvicted prisoners see PARA 697 post. As to work on days of religious observance see PARA 586 post. Ordinary work done in the course of detention does not amount to forced labour for the purposes of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 4: see Art 4(3)(a); and PARA 504 ante. For the administrative regulation of work and pay see the Prison Service Standing Order 6.

2 See the Prison Rules 1999, SI 1999/728, r 51(21); and PARA 597 post. As to excuse from work on medical grounds see PARA 579 post.

3 Ibid r 31(1). Exclusion from associated work is one of the prescribed disciplinary punishments: see r 55(1) (c); and PARA 601 post.

4 Ibid r 31(3). As to the Secretary of State see PARA 505 ante.

5 Ibid r 31(4). For the purposes of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 4, work done in the ordinary course of detention includes work done for private companies: Applications 3134/67, 3172/67, 3188-3206/67 *Twenty One Detained Persons v Germany* 11 YB 528 (1968), EComHR. See also PARA 504 ante.

6 Prison Rules 1999, SI 1999/728, r 31(6). There is no violation of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 4 where work undertaken in the course of detention is inadequately remunerated and without social security benefits: Application 833/60 *X v Austria* 3 YB 428 (1960), EComHR; Application 2413/65 *X v Germany* 23 CD 1 (1965), EComHR. See also PARA 504 ante. It is not unlawful to make deductions from payments made to prisoners in respect of work done by them, where those deductions are applied to the general purpose fund, which is a fund used to provide recreational facilities for prisoners: *R v Secretary of State for the Home Department, ex p Davis* (25 April 1994, unreported), CA.

As to the making of deductions from wages earned by prisoners for work done that is not work undertaken in accordance with the Prison Rules 1999, SI 1999/728, see PARA 578 post.

7 See the Prison Act 1952 s 13(2) (as amended); and PARA 538 ante.

8 See the Prison Rules 1999, SI 1999/728, r 9(2), (3)(b); and PARA 612 post.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(5) ACCOMMODATION, ACTIVITIES AND SERVICE/(iii) Work/578. Deductions and levies in respect of enhanced wages work.

578. Deductions and levies in respect of enhanced wages work.

Provision has been made, with effect from a day to be appointed, for deductions to be made from earnings in respect of work undertaken by prisoners which does not form part of the work required to be done under the Prison Rules 1999¹, and for which prisoners receive an enhanced wage². The provisions apply where:

- 70 (1) a prisoner³ is paid for enhanced wages work⁴ done by him⁵; and
- 71 (2) his net weekly earnings⁶ in respect of the work exceed such amount as may be prescribed⁷.

Where the prisoner's net weekly earnings fall to be paid by the governor⁸ on behalf of the Secretary of State⁹, the governor may make a deduction from those earnings of an amount not exceeding the prescribed percentage of the excess¹⁰. Where those earnings fall to be paid in any other way, the governor may impose a levy on those earnings of an amount not exceeding that percentage of the excess¹¹.

Amounts so deducted or levied are to be applied, in such proportions as may be prescribed, for the following purposes¹², namely:

- 72 (a) the making of payments (directly or indirectly) to such voluntary organisations concerned with victim support or crime prevention or both as may be prescribed¹³;
- 73 (b) the making of payments into the Consolidated Fund with a view to contributing towards the cost of the prisoner's upkeep¹⁴;
- 74 (c) the making of payments to or in respect of such persons (if any) as may be determined by the governor to be dependants of the prisoner in such proportions as may be so determined¹⁵; and
- 75 (d) the making of payments into an investment account of a prescribed description with a view to capital and interest being held for the benefit of the prisoner on such terms as may be prescribed¹⁶.

Where the governor determines under head (c) above that the prisoner has no dependants, any amount which would otherwise have been applied for the purpose mentioned in that head must be applied for the purpose mentioned in head (d) above¹⁷. Where the prisoner is aggrieved by a determination of the governor under head (c) above, he may appeal against the determination to the Secretary of State¹⁸. On such an appeal, the Secretary of State may confirm the governor's determination or direct the governor to vary it, so far as relating to amounts deducted or levied after the giving of the direction, in such manner as may be specified in the direction¹⁹.

The governor must, for each week in which an amount is so deducted or levied, furnish the prisoner with a statement:

- 76 (i) showing that amount; and
- 77 (ii) giving details of the manner in which the prescribed proportion of that amount is to be applied for the purpose mentioned in head (c) above²⁰.

Where amounts have been so deducted or levied, the governor must, on a request which is neither frivolous nor vexatious, furnish the prisoner with a statement showing the amount for the time being standing to the credit of the investment account mentioned in head (d) above²¹.

1 le the Prison Rules 1999, SI 1999/728, r 31 (see PARA 577 ante).

2 See the Prisoners' Earnings Act 1996, which does not extend to Northern Ireland: see s 5(1), (3). The Prisoners' Earnings Act 1996 is to come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different purposes: see s 5(2). At the date at which this volume states the law no such order had been made, and the Prisoners' Earnings Act 1996 is not in force.

Until 1995, in the absence of any express statutory provisions, it was the practice in prisons to make deductions from prisoners' pay where they were undertaking enhanced wages work. The sums so collected were applied to the prisoners' upkeep. Following the commencement of judicial review proceedings by a number of prisoners, the practice was stopped in respect of all prisoners except those undertaking such work as part of a pre-release employment scheme. As to pre-release employment hostels see PARA 640 post. In February 1999, the practice was determined throughout the prison system, the Prison Service having been advised that it was unlawful for prisoners to be required to pay for their own imprisonment, and that they could not consent to do so. See also 'Deductions for board and lodging from prisoners' earnings', Prison Service Instruction 09/1999.

3 For these purposes, 'prisoner' includes a prisoner on temporary release and a person required to be detained in a young offender institution or remand centre: Prisoners' Earnings Act 1996 s 4(2).

4 'Enhanced wages work', in relation to a prisoner, means any work (1) which is not directed work, that is to say, work which he is directed to do in pursuance of prison rules; and (2) to which the rates of pay and productivity applicable are higher than those that would be applicable if it were directed work: *ibid* s 1(4). 'Prison rules' means rules made under the Prison Act 1952 s 47 (see PARAS 501-502 ante): Prisoners' Earnings Act 1996 s 4(2). As to the rules made see the Prison Rules 1999, SI 1999/728. As to directed work under the Prison Rules 1999, SI 1999/728, see PARA 577 ante.

5 Prisoners' Earnings Act 1996 s 1(1)(a).

6 'Net weekly earnings' means weekly earnings after deduction of such of the following as are applicable, namely: (1) income tax; (2) national insurance contributions; (3) payments required to be made by an order of a court; and (4) payments required to be made by virtue of a maintenance assessment within the meaning of the Child Support Act 1991: Prisoners' Earnings Act 1996 s 1(4).

7 *Ibid* s 1(1)(b). 'Prescribed' means prescribed by prison rules: s 4(2). At the date at which this volume states the law no such rules had been made for this purpose.

8 In the application of the Prisoners' Earnings Act 1996 to a contracted-out prison, any reference to the governor is to be construed as a reference to the director: s 4(1)(a). See also PARA 522 ante. For these purposes, 'contracted-out prison' has the meaning given by the Criminal Justice Act 1991 s 92(1) (as amended): Prisoners' Earnings Act 1996 s 4(2).

9 As to the Secretary of State see PARA 505 ante. In the application of the Prisoners' Earnings Act 1996 to a contracted-out prison, the reference to the Secretary of State in s 1 is to be construed as a reference to the person running the prison: s 4(1)(b).

10 *Ibid* s 1(2).

11 *Ibid* s 1(3).

12 *Ibid* s 2(1).

13 *Ibid* s 2(1)(a).

14 *Ibid* s 2(1)(b). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

15 *Ibid* s 2(1)(c).

16 *Ibid* s 2(1)(d).

17 *Ibid* s 2(2).

18 Ibid s 2(3).

19 Ibid s 2(4).

20 Ibid s 3(1)(a), (b).

21 Ibid s 3(2).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(5) ACCOMMODATION, ACTIVITIES AND SERVICE/(iii) Work/579. Excusal from work on medical grounds; health and safety at work.

579. Excusal from work on medical grounds; health and safety at work.

A prisoner may be excused from work on medical grounds by the medical officer or a registered medical practitioner working in the prison¹, and no prisoner may be set to do work which is not of a class for which the medical officer or registered medical practitioner has passed him as fit². A prisoner set to work in such conditions that his health is undermined may have a cause of action³.

The substantive provisions of the Health and Safety at Work etc Act 1974 bind the Crown⁴, but the Secretary of State⁵ has a power, exercisable by statutory instrument, to exempt the Crown either generally or in particular respects from any of the otherwise binding provisions in the interests of the safe custody of persons lawfully detained⁶. Provisions in that Act relating to work and employers' duties to employees have no application to prisoners engaged in prison labour, since 'work' means work as an employee or as a self-employed person⁷, an 'employee' means someone who works under a contract of employment⁸, and prisoners are not in a relationship of employer and employee or employed for wages⁹. However, other provisions in that Act do apply. Thus, duties are cast on persons in relation to those who are not employees but use non-domestic premises made available to them as a place of work or as a place where they may use plant or substances provided for their use there: such premises must be safe and without risk to health¹⁰.

The prison authorities owe a duty of care to prisoners and are liable if a prisoner sustains injury or damage to health by negligently being made to work in unhealthy conditions or on dangerous machinery with inadequate instruction¹¹. Although prisoners, not being in insurable employment, are not covered by the industrial injuries scheme if they suffer personal injury or contract a prescribed industrial disease in the course of their work¹², there are arrangements made by the Home Office under which any prisoner who is likely to be disabled after discharge as a result of his prison employment may, following certification by a medical board, be made payments at the statutory rates¹³.

1 I.e. a medical practitioner such as is mentioned in the Prison Rules 1999, SI 1999/728, r 20(3) (see PARA 580 post): see r 31(2). As to the medical officer see PARA 580 post.

2 Ibid r 31(2). As to work required to be done see PARA 577 ante.

3 *Pullen v Prison Comrs* [1957] 3 All ER 470 at 472, [1957] 1 WLR 1186 at 1190 per Lord Goddard CJ.

4 See the Health and Safety at Work etc Act 1974 s 48(1); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 304. However, ss 21-25 (as amended) (improvement and prohibition notices) and ss 33-42 (as amended) (offences) do not bind the Crown: see s 48(1). Although ss 33-42 (as amended) do not bind the Crown, they apply to persons in the public service of the Crown as they apply to other persons: see s 48(2). See further HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 304.

5 As to the Secretary of State see PARA 505 ante.

6 See the Health and Safety at Work etc Act 1974 s 48(4), (5). See also s 15(5); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 425.

7 See ibid s 52(1)(a); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302.

8 See ibid s 53(1); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 301 et seq. 'Employee' also includes someone who holds the office of constable or an appointment as police cadet: see s 51A (added by the Police (Health and Safety) Act 1997 s 1).

9 *Pullen v Prison Comrs* [1957] 3 All ER 470, [1957] 1 WLR 1186; *Keatings v Secretary of State for Scotland* 1961 SLT 63, Sh Ct. For similar reasons it is probable that no duties are cast on the Prison Service in relation to prisoners under regulations passed under the Health and Safety at Work etc Act 1974.

10 See the Health and Safety at Work etc Act 1974 s 4(2). 'Domestic premises' means premises occupied as a private dwelling; and 'non-domestic premises' must be construed accordingly: see s 53(1); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 301 et seq.

A breach of such duties only gives rise to criminal liability; prisoners may not sue under them for breach of statutory duty: see the Health and Safety at Work etc Act 1974 s 47; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 420. See also EMPLOYMENT vol 39 (2009) PARA 34.

11 See PARA 565 ante. As to Prison Service policy on health and safety see the Prison Service Order 3801, issued 9 September 1998. See also the Prison Service Order 3810, 'Health and Safety -Arrangements for consultation with staff', issued 17 December 1998.

12 As to industrial injuries benefit see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 126 et seq. As to prescribed industrial diseases see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 150 et seq.

13 See 872 HC Official Report (5th series), 29 April 1974, written answers cols 367-368; and the Prison Service Standing Order 14.

UPDATE

579 Excusal from work on medical grounds; health and safety at work

TEXT AND NOTES 1, 2--SI 1999/728 r 31(2) substituted: SI 2009/3082.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(5) ACCOMMODATION, ACTIVITIES AND SERVICE/ (iv) Medical Care and Health/580. Medical services.

(iv) Medical Care and Health

580. Medical services.

Every prison must have a medical officer¹ who must be duly registered², and who has the care of the mental and physical health of the prisoners in that prison³. He may consult a fully registered medical practitioner⁴, and such a practitioner may work within the prison under the general supervision of the medical officer⁵. The medical officer must consult another medical practitioner, if time permits, before performing any serious operation⁶. The medical officer is subject to a duty of confidentiality in respect of consultations with prisoners, but that duty does not prevent disclosure of information indicating that there is a clear threat to the safety of staff or other prisoners⁷. Medical officers or any other medical practitioners working in the prison owe prisoners a duty of care in the provision of medical services, and the standard of care they are required to discharge is that of a reasonably competent practitioner in their field⁸. The medical officer must not apply any painful tests to a prisoner for the purpose of detecting malingering or for any purpose without the permission of the Secretary of State or the Board of Visitors⁹.

A convicted prisoner is allowed to write to his own doctor¹⁰ but has no right to consult an outside doctor unless he is a party to legal proceedings, in which case he must be afforded reasonable facilities to be examined by a registered medical practitioner selected by him or on his behalf out of the hearing but in the sight of an officer¹¹.

Every request by a prisoner to see the medical officer must be recorded by the officer to whom it is made and promptly passed on to the medical officer¹². In practice the medical officer is required to ensure that a full medical record is kept on prisoners¹³. Such records must be disclosed to the prisoner¹⁴ unless the medical officer is of the opinion that to do so is likely to cause serious harm to the physical or mental health of the prisoner or other person, or where it could identify another person (other than the medical practitioner) who provided the information¹⁵.

The medical officer or a registered medical practitioner working within the prison must report to the governor on the case of any prisoner whose health is likely to be injuriously affected by continued imprisonment or any conditions of imprisonment; and the governor must send the report, together with his own recommendations, to the Secretary of State without delay¹⁶. Reports on a prisoner made by a medical officer to the governor in the course of his duty are not privileged and must be produced in court¹⁷. The Board of Visitors must inquire into any report made to it by any person that a prisoner's mental or physical health is likely to be injuriously affected by any conditions of his imprisonment¹⁸. The medical officer or registered medical practitioner working within the prison must pay special attention to any prisoner whose mental condition appears to require it and make any special arrangements which appear necessary for his supervision or care¹⁹. If a prisoner dies, becomes seriously ill, sustains any severe injury or is removed to hospital on account of mental disorder, the governor must at once inform the prisoner's spouse or next of kin and any other person whom the prisoner may reasonably have asked to be informed²⁰.

The medical officer or any registered medical practitioner working in the prison has specific responsibilities²¹ with regard to food²², alcohol²³, exercise²⁴, work²⁵, removal from association²⁶, restraints²⁷ and cellular confinement²⁸. His general responsibility, in common with all members of the Prison Service, is to preserve the health and lives of prisoners²⁹. There is no authority in

the Prison Act 1952 or the Prison Rules 1999 for the medical officer to administer drugs to pacify or sedate a non-consenting prisoner as an aid to discipline or even where it is in the interests of the prisoner's health³⁰. Where the prisoner is incompetent to consent and in need of emergency treatment, a power to compulsorily treat arises under the common law³¹.

Although psychologists in the Prison Service perform some work in the clinical assessment of selected inmates, their major role is in the analysis of operation processes, the evaluation of treatment programmes and regimes, contributions to the management and treatment of individuals and groups, and advisory and training work with prison staff³².

1 See the Prison Act 1952 s 7(1); and PARA 515 ante. The prison medical service is not part of the National Health Service, and health care in prisons is provided for by the Health Care Service of the Prison Service (formerly known as the Prison Medical Service) which is headed by the Director of Health Care who is a member of the Prison Service Board: Prison Service Staff Directory (2nd Edn, June 1999). In practice, the most senior medical officers by grade are the managing medical officers who are accountable to the Director of Health Care for maintaining appropriate standards of medical and nursing care and to the governor for the general performance, efficiency and cost effectiveness of the medical, nursing and pharmaceutical services and for the conduct of the medical staff: see the Prison Service Standing Order 13. The managing medical officer is assisted by the health care manager, the most senior nursing officer: see the Prison Service Standing Order 13.

2 See the Prison Act 1952 s 7(4). As to registration see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 3.

3 See the Prison Rules 1999, SI 1999/728, r 20(1).

4 Ie a medical practitioner who is a fully registered person within the meaning of the Medical Act 1983 (see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 3): see the Prison Rules 1999, SI 1999/728, r 20(3). See *R v Governor of Armley Prison, ex p Rhodes* [1993] COD 434, DC (application for leave to move for judicial review in respect of a decision by the medical officer to cease treating a heroin addiction with methadone, against the strong advice of the medical adviser responsible for the applicant's treatment before his detention).

5 Prison Rules 1999, SI 1999/728, r 20(3).

6 Ibid r 20(4).

7 *W v Egdeell* [1990] Ch 359, [1990] 1 All ER 835, CA.

8 See *Brooks v Home Office* [1999] 2 FLR 33, where it was held that a pregnant prisoner was entitled to the same careful standard of obstetric care and supervision as if she was at liberty. Cf *Knight v Home Office* [1990] 3 All ER 237, 4 BMLR 85, where it was held that the standard of care provided for a mentally ill prisoner detained in a prison hospital was not required to be as high as the standard provided in a psychiatric hospital since the two institutions performed different functions and the duty of care had to be tailored accordingly. Where a prisoner's complaint relates exclusively to the inadequacy or inappropriateness of medical care provided by a medical officer, the appropriate legal avenue of redress is by way of action for medical negligence, not judicial review: *R v Secretary of State for the Home Department, ex p Dew* [1987] 2 All ER 1049, [1987] 1 WLR 881, DC. However, where it relates to a policy governing the provision of medical services, a challenge should be by way of judicial review: see eg *R v Secretary of State for the Home Department, ex p Fielding* (1999) Times, 21 July, DC.

9 See the Prison Act 1952 s 17 (amended by the Prison Commissioners Dissolution Order 1963, SI 1963/597, art 3(2), Sch 1). As to the Board of Visitors see PARAS 511-513 ante.

10 See PARA 570 ante.

11 See the Prison Rules 1999, SI 1999/728, r 20(6); and PARA 607 post. As to unconvicted prisoners see PARA 694 et seq post.

12 Ibid r 20(2). The medical officer should arrange surgeries at which all prisoners who have requested to see a doctor will be examined: see the Prison Service Standing Order 13.

13 Prison Service Standing Order 13. The inmate's medical record is a continuous record commencing with the first examination on a prisoner's reception into prison. The record is transferred with the prisoner whenever he moves to another prison.

14 See the Access to Health Records Act 1990 s 3(1) (as amended); and MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 216.

- 15 See *ibid* s 5 (as amended); and MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 216.
- 16 See the Prison Rules 1999, SI 1999/728, r 21(1). As to the Secretary of State see PARA 505 ante.
- 17 *Leigh v Gladstone* (1909) 26 TLR 139 at 142.
- 18 See the Prison Rules 1999, SI 1999/728, r 78(3); and PARA 513 ante.
- 19 *Ibid* r 21(2). See also PARA 637 post. Cf previous provisions, which required the medical officer, in addition, to inform the governor if he suspected any prisoner of having suicidal intentions, and to place the prisoner under special observation: see the Prison Rules 1964, SI 1964/388, r 18(3) (revoked). In practice, the Prison Rules 1999, SI 1999/728, are supplemented by a detailed policy on the management of prisoners who present a suicide risk: see 'Caring for the Suicidal in Custody' (1997) HM Prison Service.
- 20 Prison Rules 1999, SI 1999/728, r 22(1).
- 21 In practice, in addition to the duties provided in the Prison Rules 1999, SI 1999/728, medical officers also participate in ascertaining that standards of hygiene are being maintained. They should inspect the prison twice a year and report to the governor with regard to general conditions of health and hygiene taking into account heating, ventilation, light, sanitary conditions, water supply, clothing, bedding and the general state of cleanliness: Prison Service Standing Order 13, 6.
- 22 See the Prison Rules 1999, SI 1999/728, r 24(1), (3); and PARA 574 ante.
- 23 See *ibid* r 25(1); and PARA 574 ante.
- 24 See *ibid* r 29(4); and PARA 583 post.
- 25 See *ibid* r 31(2); and PARA 579 ante.
- 26 See *ibid* r 45(3); and PARA 592 post.
- 27 See *ibid* r 49(2), (3), (6); and PARA 595 post.
- 28 See *ibid* r 58; and PARA 601 post.
- 29 *Leigh v Gladstone* (1909) 26 TLR 139. See further PARA 581 post.
- 30 See *Barbara v Home Office* (1984) 134 NLJ 888; *Re T (Adult: Refusal of Treatment)* [1993] Fam 95, [1992] 4 All ER 649, CA; *Re C (Adult: Refusal of Treatment)* [1994] 1 All ER 819, [1994] 1 WLR 290. See further PARA 581 post.
- 31 See MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 198. Although a medical officer is a prison officer, this does not mean that a prisoner in his custody when receiving treatment is incapable of giving consent to the treatment; the court must nevertheless be alive to the risk that the consent may not be a real consent: *Freeman v Home Office (No 2)* [1984] QB 524, [1984] 1 All ER 1036, CA. As to capacity to consent see *Re F (Mental Patient: Sterilisation)* [1990] 2 AC 1, sub nom *F v West Berkshire Health Authority* [1989] 2 All ER 545, HL; *Re W (A Minor) (Medical Treatment: Court's Jurisdiction)* [1993] Fam 64, [1992] 4 All ER 627, CA; *Re C (Adult Refusal of Treatment)* [1994] 1 All ER 819, [1994] 1 WLR 290. See also PARA 581 post.
- 32 Eg Prison Service psychologists are responsible for the implementation and oversight of the sex offender therapy programmes running throughout the prison system.

UPDATE

580 Medical services

TEXT AND NOTES--As to co-operation between NHS bodies and the prison service with a view to improving the way in which their functions are exercised in relation to securing and maintaining the health of prisoners see the National Health Service Act 2006 s 249, National Health Service (Wales) Act 2006 s 188; and HEALTH SERVICES vol 54 (2008) PARA 77.

TEXT AND NOTES 1, 2--It is no longer a requirement for there to be a medical officer appointed under the Prison Act 1952 s 7(1) for each prison (and, accordingly, s 7(4) amended): see Offender Management Act 2007 s 25(1), Sch 5 Pt 2.

TEXT AND NOTES 3-12--SI 1999/728 r 20 substituted: SI 2009/3082.

TEXT AND NOTE 9--1952 Act s 17 repealed: Offender Management Act 2007 s 25(3), Sch 5 Pt 2.

TEXT AND NOTE 16--SI 1999/728 r 21(1) amended: SI 2009/3082.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(5) ACCOMMODATION, ACTIVITIES AND SERVICE/ (iv) Medical Care and Health/581. Forcible feeding.

581. Forcible feeding.

The Secretary of State¹ has formulated the following guidance as to forcible feeding². Where a prisoner persists in refusing food or fluids, the medical officer should first satisfy himself that the prisoner's capacity for rational judgment is unimpaired by illness, mental or physical³. If so satisfied, he must call in an outside consultant to confirm that opinion⁴. The prisoner must then be told clearly that he will continue to receive medical supervision and advice, that food will be made available, and that he will be removed to the prison hospital if necessary⁵. He must also be told that he may only be given food or fluid without his consent if his capacity for rational judgment becomes impaired through illness⁶. The prisoner will be closely monitored and informed of his changing condition and prospects⁷. Whether or not a hunger-striking prisoner is forcibly fed is thus a matter for the clinical judgment of the medical officer and only arises for him when he and an outside medical practitioner are both satisfied that the prisoner no longer has the capacity rationally to decide whether or not to continue refusing food or fluids⁸. The Secretary of State has no responsibility in the matter and cannot interpose himself between the clinical judgment of the doctor and his patient⁹.

1 As to the Secretary of State see PARA 505 ante.

2 The guidance was approved by the court in *Secretary of State for the Home Department v Robb* [1995] 1 All ER 677, [1995] Fam 127. In this case it was held that the situation was governed by the general law relating to capacity; and the court further considered that where a prisoner died as a result of a hunger strike this did not amount to suicide (expressly disapproving *Leigh v Gladstone* (1909) 26 TLR 139 at 142).

3 Prison Service Standing Order 13, 40-41.

4 Prison Service Standing Order 13, 40-41.

5 Prison Service Standing Order 13, 40-41.

6 Prison Service Standing Order 13, 40-41.

7 Prison Service Standing Order 13, 40-41.

8 Prison Service Standing Order 13, 40-41.

9 The Secretary of State is not liable criminally for any actions in connection with forcible feeding: *R v Morton Brown, ex p Ainsworth* (1909) 74 JP 53, DC.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(5) ACCOMMODATION, ACTIVITIES AND SERVICE/ (iv) Medical Care and Health/582. Temporary release and removal for ill health.

582. Temporary release and removal for ill health.

In addition to the general power to release a prisoner temporarily¹, there is a power to order a temporary and conditional discharge of a prisoner on grounds of ill health². If satisfied that by reason of the condition of the prisoner's health it is undesirable to detain him in prison but that, since his condition is due to the prisoner's own conduct in prison, his release should be temporary and conditional only, the Secretary of State³ may by order authorise the temporary discharge of the prisoner for such period and subject to such conditions as may be stated in the order⁴. A prisoner so released must comply with any conditions in the order of temporary discharge and must return to prison at the expiration of the period stated in the order, and he may be arrested without warrant and returned to prison if he fails to do either⁵. The sentence ceases to run while the prisoner is so released⁶. The duties of the medical officer in respect of a prisoner who has not been so released are unaffected⁷.

If satisfied that a prisoner requires medical investigation or observation, or medical or surgical treatment of any description, the Secretary of State may direct him to be taken to a hospital or other suitable place for that purpose⁸. A prisoner so removed remains in custody unless the Secretary of State otherwise directs⁹.

1 See PARA 612 post.

2 See the Prison Act 1952 s 28; and the text and notes 4-7 infra.

3 As to the Secretary of State see PARA 505 ante.

4 See the Prison Act 1952 s 28(1). The power, previously under the Prisoners (Temporary Discharge for Ill-health) Act 1913 (repealed), was once used liberally in the case of hunger-striking prisoners (see PARA 581 ante), but is now not used. The Prison Act s 28 does not apply to remand centres, young offender institutions or secure training centres: see s 43 (as substituted and amended); and PARAS 643, 657 post.

As to the removal to hospital of mentally disordered prisoners see PARA 637 post; and MENTAL HEALTH vol 30(2) (Reissue) PARA 525 et seq.

5 See *ibid* s 28(3).

6 See *ibid* s 28(4).

7 See *ibid* s 28(5). As to those duties see PARA 580 ante.

8 See *ibid* s 22(2)(b). In practice, where the medical officer considers that any delay in obtaining authority would endanger the prisoner's life, he may personally authorise the prisoner's removal, but otherwise he should seek approval from Prison Service Headquarters, and the relevant section in the case of a Category A prisoner: Prison Service Standing Order 13, 57. As to security categorisation see PARA 537 ante.

9 See the Prison Act 1952 s 22(2). As to legal custody see PARA 538 ante. A prisoner remains liable to be restrained including by the use of handcuffs: Prison Service Security Manual, 60.20-21. See also Application 20972/92 *Raninen v Finland* (1998) 26 EHRR 563, [1998] HRCd 170, EComHR, indicating that handcuffing which is unnecessary to prevent a prisoner absconding, causing injury or damage, and which causes physical harm or adversely affects the prisoner's mental state, may violate the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 3 (see PARA 504 ante). As to the removal of restraints from pregnant women during ante-natal appointments and delivery of a child see PARA 634 post.

UPDATE

582 Temporary release and removal for ill health

TEXT AND NOTE 7--1952 Act s 28(5) repealed: Offender Management Act 2007 s 25(3), Sch 5 Pt 2.

NOTE 9--Application 20972/92 cited, considered: *R (on the application of Faizovas) v Secretary of State for Justice* [2009] EWCA Civ 373, (2009) 109 BMLR 15.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(5) ACCOMMODATION, ACTIVITIES AND SERVICE/ (iv) Medical Care and Health/583. Exercise.

583. Exercise.

Weather permitting and subject to the need to maintain good order and discipline, a prisoner must be given the opportunity to spend time in the open air at least once every day, for such period as may be reasonable in the circumstances¹.

If circumstances reasonably permit, prisoners aged 21 years or over must be given the opportunity to participate in physical education for at least one hour a week². In relation to prisoners under 21 years, to the extent that circumstances reasonably permit (1) provision must be made for their physical education within the normal working week, as well as evening and weekend physical recreation³; and (2) arrangements must be made for each such prisoner who is a convicted prisoner to participate in physical education for at least two hours a week on average⁴. Appropriate facilities will be provided for prisoners with a need for remedial physical activity⁵.

The medical officer or a registered medical practitioner working in the prison must decide upon the fitness of every prisoner for physical education and remedial physical activity and may excuse a prisoner from, or modify, any such education or activity on medical grounds⁶.

1 Prison Rules 1999, SI 1999/728, r 30.

2 Ibid r 29(1). The practice governing physical education is subject to directions contained in Prison Service Order 4275 'Time in the open air', issued 23 October 1998.

3 Prison Rules 1999, SI 1999/728, r 29(2)(a). The physical education activities will be such as foster personal responsibility and the prisoner's interests and skills and encourage him to make good use of his leisure on release: see r 29(2)(a).

4 Ibid r 29(2)(b).

5 Ibid r 29(3).

6 Ibid r 29(4). As to medical services generally see PARA 580 ante.

UPDATE

583 Exercise

TEXT AND NOTE 6--SI 1999/728 r 29(4) omitted: SI 2005/3437.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(5) ACCOMMODATION, ACTIVITIES AND SERVICE/ (v) Religion and Welfare/584. Chaplain and ministers.

(v) Religion and Welfare

584. Chaplain and ministers.

Every prison must have a chaplain¹ and, if large enough, may also have an assistant chaplain², both of whom must be clergymen of the Church of England³. Notice of the nomination of a chaplain or assistant chaplain to a prison must be given to the diocesan bishop within a month; and the chaplain or assistant chaplain may officiate in the prison only under the authority of a licence from the bishop⁴. The Secretary of State⁵ may appoint a minister of a denomination other than the Church of England if the number of prisoners in any prison who belong to that denomination requires such an appointment⁶. If no such appointment has been made, the Secretary of State may allow a minister of a denomination other than the Church of England to visit prisoners of his denomination⁷, but no prisoner may be visited against his will by such a minister⁸.

In practice, in addition to the chaplain, a Roman Catholic priest and a Methodist minister are appointed to every prison and other ministers are appointed or called in as necessary. The Prison Service Chaplaincy, based at Prison Service Headquarters, is the central organisation responsible for religious activity in Prison Service establishments⁹.

1 See the Prison Act 1952 s 7(1); and PARA 515 ante. A chaplain may serve as such in two prisons only if they are within convenient distance of each other and are together designed to receive not more than 100 prisoners: s 9(1). A person approved by the Secretary of State may act for the chaplain in his absence: Prison Rules 1999, SI 1999/728, r 17(1).

2 Prison Act 1952 s 7(3).

3 Ibid s 7(4). References to the Church of England are to be construed as including references to the Church in Wales: s 53(3).

4 See ibid s 9(2).

5 As to the Secretary of State see PARA 505 ante.

6 See the Prison Act 1952 s 10(1). The Secretary of State may pay the minister such remuneration as he thinks reasonable: s 10(2). With the leave of the Secretary of State, a prison minister may appoint a substitute to act for him in his absence: Prison Rules 1999, SI 1999/728, r 17(2).

7 See the Prison Act 1952 s 10(3) (amended by the Prison Commissioners Dissolution Order 1963, SI 1963/597, art 3(2), Sch 1).

8 See the Prison Act 1952 s 10(4).

9 See the Prison Service Standing Order 7A.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(5) ACCOMMODATION, ACTIVITIES AND SERVICE/ (v) Religion and Welfare/585. Religious visits.

585. Religious visits.

On a prisoner's reception into prison, the governor must record the religious denomination to which the prisoner declares himself to belong¹, and the prisoner must be treated as being of that denomination, although the governor may direct the record to be amended in a proper case and after due inquiry².

Any minister appointed to the prison or permitted to visit prisoners in the prison must be given by the governor a list of those prisoners declaring themselves to belong to his denomination, and may visit only those prisoners³. However, prisoners not belonging to the Church of England must be allowed to attend chapel or to be visited by the chaplain⁴; and, if the prisoner is willing, the chaplain must visit any prisoner not of the Church of England who is sick, under restraint or undergoing cellular confinement and is not regularly visited by a minister of his own denomination⁵.

The chaplain must visit prisoners belonging to the Church of England⁶ and a prison minister must do so as regularly as he reasonably can for prisoners of his own denomination⁷. Where a prisoner belongs to a denomination for which no prison minister has been appointed, the governor must do what he reasonably can, if requested by the prisoner, to arrange for regular visits by a minister of that denomination⁸. The chaplain must visit daily all prisoners belonging to the Church of England who are sick, under restraint or undergoing cellular confinement, and a prison minister must do likewise, as far as he reasonably can, for prisoners of his own denomination⁹. Moreover, the chaplain or prison minister must interview every prisoner of his denomination individually soon after the prisoner's reception into that prison and shortly before his release¹⁰. If other arrangements have not been made, the chaplain or prison minister must read the burial service at the funeral of any prisoner of his denomination who dies in the prison¹¹.

1 See the Prison Act 1952 s 10(5). For the purposes of s 10(5) in relation to a contracted-out prison, references to the governor are to be construed as references to the director: Criminal Justice Act 1991 s 87(1), (4).

2 Prison Rules 1999, SI 1999/728, r 13. See also the Prison Service Standing Order 7A.

3 See the Prison Act 1952 s 10(5). As to prison ministers see PARA 584 ante.

4 See *ibid* s 10(4). As to the chaplain see PARA 584 ante.

5 Prison Rules 1999, SI 1999/728, r 14(3).

6 *Ibid* r 15(1).

7 *Ibid* r 15(2).

8 *Ibid* r 15(3).

9 See *ibid* r 14(2).

10 *Ibid* r 14(1)(a).

11 *Ibid* r 14(1)(b).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(5) ACCOMMODATION, ACTIVITIES AND SERVICE/ (v) Religion and Welfare/586. Religious observance.

586. Religious observance.

The chaplain¹ must conduct divine service for prisoners belonging to the Church of England at least once every Sunday, Christmas Day and Good Friday, and such celebrations of Holy Communion and weekday services as may be arranged². Prison ministers must conduct divine service for prisoners of their denominations at such times as may be arranged³.

Arrangements must be made so as not to require prisoners of the Christian religion to do any unnecessary work on Sunday, Christmas Day or Good Friday, or prisoners of other religions to do any such work on their recognised days of religious observance⁴. So far as reasonably practicable, there must be available for the personal use of every prisoner such religious books recognised by his denomination as are approved by the Secretary of State⁵. Prisoners are entitled in practice to a diet that accords with the demands of their religion as agreed between the religious body and Prison Service Headquarters, but if there is no agreement the governor should ensure, subject to the requirements of security and control, that prisoners are not discriminated against unfairly in the provision of diet⁶.

1 As to the chaplain see PARA 584 ante.

2 Prison Rules 1999, SI 1999/728, r 16(1). Prisoners not belonging to the Church of England must be allowed to attend chapel: see the Prison Act 1952 s 10(4); and PARA 585 ante. See the Prison Service Standing Order 7A.

3 Prison Rules 1999, SI 1999/728, r 16(2).

4 Ibid r 18. As to work see PARA 577 ante.

5 Ibid r 19. As to the Secretary of State see PARA 505 ante.

6 Prison Service Standing Order 7A. As to discrimination within prisons see *Alexander v Home Office* [1988] 2 All ER 118, [1988] 1 WLR 968, CA.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(5) ACCOMMODATION, ACTIVITIES AND SERVICE/ (v) Religion and Welfare/587. Welfare services.

587. Welfare services.

From the beginning of a prisoner's sentence, consideration must be given, in consultation with the appropriate after-care organisation, to the prisoner's future and the assistance to be given him on and after his release¹. To that end members of the probation service are seconded for limited periods to prisons to give practical assistance on welfare problems to prisoners throughout their sentences².

Prisoners must be encouraged and assisted to establish and maintain such relations with persons and agencies outside prison as may, in the governor's opinion, best promote the interests of their families and their own social rehabilitation³.

The Prison Service appoints voluntary prison visitors from the outside community⁴, whose role is to maintain regular contact with certain prisoners during their sentences. These prison visitors are unconnected with the prison staff and the prisoner may talk in a free and friendly manner about matters of personal and general interest.

1 Prison Rules 1999, SI 1999/728, r 5.

2 As to the probation service see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 733 et seq.

3 See the Prison Rules 1999, SI 1999/728, r 4(2); and PARA 569 ante.

4 Prison visitors have no connection with the Board of Visitors, and members of the board are not prison visitors. As to Boards of Visitors see PARAS 511-513 ante.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(i) General Provisions/588. General principles.

(6) MAINTENANCE OF DISCIPLINE AND ORDER

(i) General Provisions

588. General principles.

The Secretary of State¹ is empowered to make rules for the discipline and control of prisoners². This is subject to the overriding requirement that no cruel and unusual punishments are to be inflicted³ nor may any prisoner be subjected to torture or inhuman or degrading treatment or punishment⁴. Order and discipline must be maintained with firmness, but with no more restriction than is required for safe custody and well ordered community life⁵.

1 As to the Secretary of State see PARA 505 ante.

2 See the Prison Act 1952 s 47(1) (as amended); and PARAS 501-502 ante.

3 Bill of Rights (1688 or 1689) s 1. The words are to be read conjunctively and they prohibit punishments which are both cruel and unusual: *Williams v Home Office (No 2)* [1981] 1 All ER 1211 at 1244-1246 (affd on other grounds [1992] 2 All ER 564, CA); *R v Miller and Cockriell* (1976) 70 DLR (3d) 324, Can SC. See also *R v Home Secretary, ex p Herbage* [1987] QB 872, [1986] 3 All ER 209; *R v Home Secretary, ex p Herbage (No 2)* [1987] QB 1077, [1987] 1 All ER 324, CA.

4 See the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 3; and PARA 504 ante.

5 Prison Rules 1999, SI 1999/728, r 6(1). See further rr 6(2), (3), 47(2); and PARAS 516, 541 ante. As to the powers of prison officers see the Prison Act 1952 s 8; and PARA 516 ante.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(i) General Provisions/589. Use of force.

589. Use of force.

In dealing with a prisoner an officer must not use force unnecessarily and, when the application of force to a prisoner is necessary, may use no more than is necessary¹. Neither the Prison Act 1952 nor the Prison Rules 1999 stipulate when force is necessary. Prison officers have the powers of constables². Such force as is necessary may be used in the prevention of crime and in effecting or assisting in a lawful arrest³. It is generally assumed that reasonable force may also be used when dealing with indiscipline on the part of a prisoner; and any failure by a prisoner to obey a lawful order and any refusal or neglect to conform to any rule or regulation of the prison are punishable offences against discipline⁴. A lawful order is presumably one which can derive support from the Prison Rules 1999 or any rule or regulation of the prison or which is necessary to the discharge of the proper functions of the prison authorities in keeping the prisoners in custody in a safe, orderly and efficient manner. The force must be necessary otherwise than to punish the prisoner, for which specific sanctions are provided following prescribed procedures⁵. It may be supposed, therefore, that reasonable force may be used to ensure compliance with the rules and regulations of the prison and to maintain order and discipline⁶, but only to the extent strictly necessary for those purposes and never for a punitive purpose⁷.

1 See the Prison Rules 1999, SI 1999/728, r 47(1); and PARA 516 ante. All reasonable efforts must be made to manage prisoners by persuasion or other means that do not entail the use of force, which must always be regarded as a last resort; and where the use of force is necessary, only approved control and restraint techniques should be employed unless this is impractical: see Prison Service Order 1600, 'Use of Force'. Prison officers who resort to force when dealing with a prisoner are required to complete a use of force report which should be a brief, factual report to the governor explaining why it was necessary to use force, the kind of force and how much force was used: see Prison Service Order 1600, 'Use of Force'. As to forcible feeding see PARA 581 ante.

2 See the Prison Act 1952 s 8; and PARA 516 ante. As to constables or members of the armed forces employed by reason of an emergency to assist a prison governor see PARA 516 ante.

3 See the Criminal Law Act 1967 s 3(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 20, vol 11(2) (2006 Reissue) PARA 926.

4 See PARA 597 post.

5 See PARA 598 et seq post.

6 For a contrary view see *R v Berrie* (1975) 24 CCC (2d) 66, BC, where forcibly shaving a prisoner who disobeyed a lawful order to shave constituted an assault; the proper means of enforcement would be through the disciplinary machinery.

7 Ill-treating a prisoner has from the earliest times been controlled by the ordinary law: see *Anon* (1654) 1 Sty 433; *R v Huggins* (1730) 2 Stra 883; *Osborne v Angle* (1835) 2 Scott 500 at 503 per Tindall CJ.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(i) General Provisions/590. Searches.

590. Searches.

Prisoners must be searched when taken into custody by an officer, on reception into prison and subsequently as the governor thinks necessary or as the Secretary of State may direct¹. A prisoner must be searched in as seemly a manner as is consistent with discovering anything concealed², and a prisoner must not be stripped and searched in the sight of another prisoner or in the sight of a person of the opposite sex³.

1 See the Prison Rules 1999, SI 1999/728, r 41(1). See also PARA 542 ante. Detailed guidance to prison staff on searching procedures is set out in the Prison Service Security Manual, which is not publicly available. The Prison Service's policy of conducting routine strip searches of prisoners (ie in the absence of reasonable cause to suspect the presence of an unauthorised article) before and after visits is lawful: *R v Secretary of State for the Home Department, ex p Zulfikar* (1995) Times, 26 July, DC; cf *Re Baker and others applications* (1992) 8 NIJB 8). Furthermore, the policy of routine cell searches conducted in the prisoner's absence from his cell, which includes the searching (but not reading) of legally privileged correspondence, is lawful: *R v Governor of Whitemoor Prison, ex p Main* [1999] QB 349, [1998] 2 All ER 491, CA. Excessive searches of a prisoner which can be shown to degrade may constitute a breach of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 3 (see PARA 504 ante): see *X v United Kingdom* 21 DR 99 (1981).

2 Prison Rules 1999, SI 1999/728, r 41(2). A search which is not conducted in a reasonably seemly and decent manner has been held to be actionable as a previously unacknowledged form of trespass to the person, ie unlawfully inducing a person to remove his or her clothes: *Bayliss and Barton v Home Office* (1992) reported in [1993] Legal Action 16, Liverpool County Court. The claim in that case arose from a decision to strip search persons coming to visit a prisoner but similar principles would seem to apply to the conduct of searches of prisoners.

3 Prison Rules 1999, SI 1999/728, r 41(3).

UPDATE

590 Searches

NOTE 2--See *R (on the application of Al-Hasan) v Secretary of State for the Home Department*; *R (on the application of Carroll) v Secretary of State for the Home Department* [2005] UKHL 13, [2005] 1 All ER 927 (factors to be considered when examining whether a squat search is lawful).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(i) General Provisions/591. Criminal offences.

591. Criminal offences.

Where a prisoner is thought to have committed a criminal offence, or a criminal offence is thought to have been committed, the prison authorities will decide whether to call in the police in order to conduct an investigation¹. It will be for the ordinary prosecuting authorities to decide whether a criminal prosecution will be brought. On production of an order issued by or on behalf of a chief officer of police, a police officer may interview any prisoner willing to see him².

Where the prisoner's offence is also an offence against discipline and a decision to prosecute is taken, it seems that the disciplinary charge will not be proceeded with³. The case law under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) establishes that an offence against discipline which is also a criminal offence, and which is punished by a considerable loss of remission, may properly fall within the criminal rather than the disciplinary sphere so as to attract the protections which attend those charged with a criminal offence⁴. The protections include the right:

- 78 (1) to be informed promptly of the nature and cause of the charge;
- 79 (2) to have adequate time and facilities for the preparation of a defence;
- 80 (3) to defend oneself in person or through legal assistance of one's own choosing, being provided at public expense if necessary;
- 81 (4) to examine witnesses for the prosecution; and
- 82 (5) to obtain the attendance and examination of witnesses for the defence⁵.

It is permissible to deal with the matter in a disciplinary context provided these standards are met⁶.

1 Any serious criminal offence, whether or not there is an identifiable suspect, should be reported immediately to the governor to decide whether the police should be informed: Prison Service Discipline Manual para 11.1. Where the police are asked to investigate, any disciplinary charge should nevertheless be laid within 48 hours of the alleged offence: Prison Service Discipline Manual App 3 para 4. In such cases the governor should open the adjudication and adjourn the hearing pending the outcome of the police investigation: Prison Service Discipline Manual App 3 para 4. If the police or Crown Prosecution Service decide that a prosecution can not be brought because the available evidence is insufficient and if the disciplinary charge is similar to and relies on the same evidence as the potential charge, the governor should dismiss the disciplinary charge: Prison Service Discipline Manual para 11.6. As to offences in relation to escape from prisons see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 741 et seq. As to offences by prison officers see PARA 517 ante.

2 Prison Rules 1999, SI 1999/728, r 36. A solicitor acting for an accused awaiting trial should be allowed to interview, in an officer's presence, a material witness who is imprisoned: *R v Simmonds* (1835) 7 C & P 176.

3 Prison Service Discipline Manual para 11.10. To proceed with a disciplinary charge in tandem with a criminal prosecution based on the same facts would appear to violate the European Prison Rules r 36(1), which states that a prisoner should not be punished twice for the same act. As to the European Prison Rules see PARA 504 ante. However, it has been held that a disciplinary conviction on an escape offence was no bar to subsequent criminal proceedings: see *R v Hogan* [1960] 2 QB 513, [1960] 3 All ER 149, CCA.

The victim of an offence under the Prison Rules (see now the Prison Rules 1999, SI 1999/728) is not eligible for compensation under the criminal injuries compensation scheme, the word 'offence' referring to one punishable by the criminal law: *R v Criminal Injury Compensation Board, ex p Penny* [1982] Crim LR 298.

4 *Campbell and Fell v United Kingdom* (1984) 7 EHRR 165; cf Application 6224/73 *Kiss v United Kingdom* (1976) 7 DR 55. The charges in *Campbell and Fell v United Kingdom* supra were the disciplinary offences of mutiny, incitement to mutiny and gross personal violence to a prison officer, all of which have now been deleted from the prison disciplinary code. They were charges which could only be considered by Boards of Visitors,

whose disciplinary functions have now been abolished. The European Court of Human Rights regarded the offences in *Campbell and Fell v United Kingdom* supra as not purely disciplinary in nature and considered that loss of remission of a part of a prisoner's sentence could be regarded as a form of imprisonment. Furthermore, the grave penalties imposed by the Board of Visitors, equivalent to an actual loss of 18 months' remission, led the court to find that the disciplinary offences were criminal in nature thereby attracting the protection of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 6 (see PARA 504 ante). The Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 6 was also held to apply where a prisoner risked losing substantial amount of remission in Application 17525/90 *Delazarus v United Kingdom* (16 February 1993, unreported). Now that Boards of Visitors' disciplinary functions have been abolished and governors enjoy a greatly reduced power to award additional days of imprisonment (42 days), it is uncertain whether any of the current prison disciplinary charges (see the Prison Rules 1999, SI 1999/728, r 51; and PARA 597 post) would be regarded as coming within the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 6. See Application 11691/85 *Pelle v France* 50 DR 263 (1986), in which the risk of loss of 18 days' remission for threatening a prison guard was held not to be sufficient to attract protections under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 6. As to Boards of Visitors see PARAS 511-513 ante.

5 Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 6(3). Adjudications by a governor do not constitute a 'criminal cause or matter' within the Supreme Court Act 1981 s 18(1)(a) (as amended) (replacing the Supreme Court of Judicature Act 1925 s 31(1)(a) (repealed)), and hence appeals from the Divisional Court lie to the Court of Appeal and not direct to the House of Lords: *R v Board of Visitors of Hull Prison, ex p St Germain* [1979] QB 425, [1979] 1 All ER 701, CA (a case which concerned the (now abolished) disciplinary functions of the Board of Visitors, but the same principle applies to governors' disciplinary powers).

6 *Campbell and Fell v United Kingdom* (1984) 7 EHRR 165.

UPDATE

591 Criminal offences

NOTE 4--See *R (on the application of Greenfield) v Secretary of State for the Home Department* [2005] UKHL 14, [2005] 1 WLR 673; *R (on the application of Al-Hasan) v Secretary of State for the Home Department*; *R (on the application of Carroll) v Secretary of State for the Home Department* [2005] UKHL 13, [2005] 1 All ER 927; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 134 et seq.

NOTE 5--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(ii) Special Control and Supervision, Restraint and Drug Testing/592. Removal from association.

(ii) Special Control and Supervision, Restraint and Drug Testing

592. Removal from association.

The governor¹ may arrange for the removal of a prisoner from association with other prisoners, either generally or for particular purposes, where it appears desirable either for the maintenance of good order or discipline or in the prisoner's own interests that he should not associate with other prisoners². The governor must act fairly in considering whether to remove a prisoner from association, but as a matter of law he need not be given notice of his possible or imminent removal or be given an opportunity to make representations³. As a matter of administrative practice, however, officers are directed to provide reasons orally at the time of removal from association and written reasons within 24 hours of segregation⁴. It is permissible to deprive a prisoner of association entirely, but the obligation is not to do so unduly or excessively, and this depends on the circumstances⁵.

It is highly improper to use removal from association as a device to punish a prisoner and would be grossly wrong to inflict a punishment under the pretence of acting for good order and discipline as both would contravene the rules⁶. There is, however, no obligation on a governor to prefer a disciplinary charge whenever conduct which gives rise to a decision to segregate also amounts to an offence against discipline⁷. The governor may decide simply to segregate even though this deprives the prisoner of an opportunity to defend himself via the more formal disciplinary procedure⁸.

The removal from association must not exceed three days without the authority of either a member of the Board of Visitors or of the Secretary of State⁹. Such an authority is valid for a period not exceeding one month, and is renewable from month to month; but, in the case of a person aged less than 21 years who is detained in prison, such an authority is valid for a period not exceeding 14 days although it may be renewed from time to time for a like period¹⁰. The governor may at his discretion arrange for the prisoner to resume association and he must do so if in any case the medical officer or a registered medical practitioner working within the prison¹¹ so advises on medical grounds¹². The power to segregate a prisoner does not apply to a prisoner who has been removed from association and transferred to a close supervision centre¹³. Segregation of a prisoner from the prison community for security, disciplinary or protective reasons does not itself constitute inhuman or degrading treatment or punishment within the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)¹⁴. In assessing the compatibility of segregation (or solitary confinement) with the provisions of the Convention, regard must be had to the stringency of the measure, its duration, the objective pursued and the effects on the person concerned¹⁵.

1 It is the governor of the prison in which the prisoner is for the time being (ie the governor in whose custody the prisoner is under the Prison Act 1952 s 13 (as amended): see PARA 538 ante) who alone may arrange for his removal from association within that prison. Thus a Circular Instruction (10/1974) which purported to give the governor of prison A a power to transfer a prisoner from his prison to prison B where he would be segregated on arrival was ultra vires: *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1990] 3 All ER 687, [1990] 3 WLR 1210; affd on other grounds [1992] 1 AC 58, sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733, HL. See also PARA 522 ante.

2 See the Prison Rules 1999, SI 1999/728, r 45(1). See also Prison Service Order 1701, 'Removal from Association -Good Order and Discipline', which provides administrative guidance to governors and Boards of Visitors on the purpose and operation of the power under the Prison Rules 1999, SI 1999/728, r 45, explains that

segregation under r 45 may only be used where there is no other reasonable way to maintain good order or discipline within the establishment. Under no circumstances may it be used with the intention of inflicting a punishment on the prisoner: Prison Service Order 1701, 'Removal from Association -Good Order and Discipline', PARA 1.1.3.

3 *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1990] 3 All ER 687, [1990] 3 WLR 1210; affd on other grounds [1992] 1 AC 58, *Hague* [1992] 1 AC 58, sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733, HL. See also *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531, sub nom *Doody v Secretary of State for the Home Department* [1993] 3 All ER 92, HL.

4 Prison Service Order 1701, 'Removal from Association -Good Order and Discipline', PARA 2.2.1.

5 *Williams v Home Office (No 2)* [1981] 1 All ER 1211 at 1232 per Tudor Evans J. This may be taken to apply notwithstanding the Prison Rules 1999, SI 1999/728, r 7(4) (see PARA 536 ante) or r 31(1) (see PARA 577 ante). The wording of r 45(1) ('... should not associate with other prisoners, either generally or for particular purposes ...') makes it clear that that not every decision to segregate can justify total isolation from other prisoners. Each case requires separate reasoning and justification.

6 *Williams v Home Office (No 2)* [1981] 1 All ER 1211 at 1235 per Tudor Evans J. Such conduct would give rise to a claim in misfeasance in a public office as it would amount to a malicious abuse of power within the criteria laid down in *Three Rivers District Council v Bank of England (No 3)* (1998) 11 Admin LR 281, Times, 10 December, CA. See also *Toumia v Evans* (1999) Times, 1 April, CA.

7 As to offences against discipline see PARA 597 post.

8 See the reasoning of the Divisional Court on this issue in *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1992] 1 AC 58, [1990] 3 All ER 687; on appeal [1992] 1 AC 58, sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733, HL (segregation rather than disciplinary charge; Divisional Court held that avoiding embarrassment to prison staff, whose function it is to maintain discipline, could be a legitimate reason for not preferring a charge).

9 Prison Rules 1999, SI 1999/728, r 45(2). As to Boards of Visitors see PARAS 511-513 ante. As to the Secretary of State see PARA 505 ante.

10 Ibid r 45(2). Authorisation simply by telephone is not enough; a member of the Board of Visitors must visit each prisoner whose segregation the governor wishes to extend: see Prison Service Order 1701, 'Removal from Association -Good Order and Discipline', PARA 3.1.1.

A governor grade officer must visit every day, and the chaplain and medical officer must visit at least every three days: Prison Service Order 1701, 'Removal from Association -Good Order and Discipline', PARA 3.1.1.

It is not contrary to the rules to remove a prisoner for a fixed period: *Williams v Home Office (No 2)* [1981] 1 All ER 1211 at 1232 per Tudor Evans J.

11 Is a medical practitioner such as is mentioned in the Prison Rules 1999, SI 1999/728, r 20(3) (see PARA 580 ante): see r 45(3). As to the medical officer see PARA 580 ante.

12 Ibid r 45(3).

13 Ibid r 45(4). As to transfer to a close supervision centre see r 46; and PARA 593 post. Rule 46 provides a comprehensive code governing the removal from association of prisoners within a close supervision centre, which is wholly subject to the Secretary of State's discretion so that the Board of Visitors has no role in deciding whether a prisoner segregated under r 46 should remain segregated from month to month (see the text and notes 9-10 supra).

14 *Hilton v United Kingdom* (1978) 3 EHRR 104, where the practice was described as 'in principle undesirable'. See also *Koskinen v Finland* (1994) 18 EHRR CD 146; *Dhoest v Belgium* 55 DR 5 (1987). As to the provisions referred to see the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 3; and PARA 504 ante.

15 *Krocher and Moller v Switzerland* 34 DR 24 (1983); *Treholt v Norway* 71 DR 168 (1991); *R v Denmark* (1986) 8 EHRR 60; *M v United Kingdom* 35 DR 13 (1984); Applications 7572/76, 7586/76, 7587/76 *Ensslin, Baader and Raspe v Germany* 14 DR 64 (1978), EComHR.

UPDATE

592-596 Special Control and Supervision, Restraint and Drug Testing

A prisoner may be placed under constant observation by means of an overt closed circuit television system if the governor considers it necessary on specified grounds: see the Prison Rules 1999, SI 1999/728, r 50A, PARA 595A.

592 Removal from association

NOTE 3--Cf *R (on the application of SP) v Secretary of State for the Home Department* [2004] EWCA Civ 1750, [2004] All ER (D) 352 (Dec) (child in young offender institute of prison entitled to make representations before order made).

NOTE 6--As to the ingredients of the tort of misfeasance, see now *Three Rivers DC v Bank of England* [2000] 3 All ER 1, [2000] 2 WLR 1220, HL; *Three Rivers DC v Bank of England (No 3)* [2001] UKHL 16, [2001] 2 All ER 513.

TEXT AND NOTE 9--Replaced. A prisoner must not be removed for a period of more than 72 hours without the authority of the Secretary of State and such authority must be for a period not exceeding 14 days but it may be renewed from time to time for a like period: SI 1999/728 r 45(2) (substituted by SI 2005/3437).

TEXT AND NOTES 11, 12--Replaced. The governor may arrange, at his discretion, for a prisoner who has been removed to resume association with other prisoners at any time, and in exercising that discretion the governor must fully consider any recommendation that the prisoner resumes association on medical grounds made by a registered medical practitioner or registered nurse working within the prison: r 45(3) (substituted by SI 2005/3437; and amended by SI 2009/3082).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(ii) Special Control and Supervision, Restraint and Drug Testing/593. Segregation within a close supervision centre.

593. Segregation within a close supervision centre.

Where it appears desirable, for the maintenance of good order or discipline or to ensure the safety of officers, prisoners or any other person, that a prisoner should not associate with other prisoners, either generally or for particular purposes, the Secretary of State¹ may direct the prisoner's removal from association accordingly and his placement in a close supervision centre of a prison². Such a direction must be for a period not exceeding one month but may be renewed from time to time for a like period³. The Secretary of State may direct that a prisoner who has been transferred to a close supervision centre is to resume association with other prisoners, either within a close supervision centre or elsewhere⁴. In exercising any discretion under these provisions, the Secretary of State must take account of any medical considerations known to him⁵. A prisoner is not entitled as a matter of law to be told in advance of a proposed decision to segregate him in a close supervision centre, nor must he be told why it is proposed to extend his detention from month to month so that he may make effective representations to the Secretary of State on the proposed decision⁶. As a matter of administrative practice, however, prisoners enjoy such procedural fairness protections⁷.

1 As to the Secretary of State see PARA 505 ante.

2 Prison Rules 1999, SI 1999/728, r 46(1). The close supervision centre system came into operation in 1998 and replaced the previous system of special units for disturbed and disruptive prisoners described in the Instruction to Governors 28/1993. There are five close supervision centres, three at Woodhill, one at Hull and one at Durham.

3 Prison Rules 1999, SI 1999/728, r 46(2).

4 Ibid r 46(3).

5 Ibid r 46(4).

6 *R v Secretary of State for the Home Department, ex p Mehmet and O'Connor* (1999) Times, 18 February, DC.

7 The procedural fairness standards are set out in the Operating Standards for Close Supervision Centres, published by the Prison Service.

UPDATE

592-596 Special Control and Supervision, Restraint and Drug Testing

A prisoner may be placed under constant observation by means of an overt closed circuit television system if the governor considers it necessary on specified grounds: see the Prison Rules 1999, SI 1999/728, r 50A, PARA 595A.

593 Segregation within a close supervision centre

TEXT AND NOTE 3--A direction continues to apply notwithstanding any transfer of a prisoner from one prison to another: SI 1999/728 r 46(2) (amended by SI 2000/1794).

TEXT AND NOTE 5--A close supervision centre is any cell or other part of a prison for the time being used for holding a prisoner who is subject to a direction given under SI 1999/728 r 46(1): r 46(5) (added by SI 2000/1794).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(ii) Special Control and Supervision, Restraint and Drug Testing/594. Temporary confinement.

594. Temporary confinement.

Every prison is required to have special cells for the temporary confinement of refractory or violent prisoners¹. The governor² may order such a prisoner to be confined temporarily in such a cell, but he must not be so confined as a punishment, or after he has ceased to be refractory or violent³. A prisoner must not be confined in a special cell for longer than 24 hours without a direction in writing given by a member of a Board of Visitors⁴ or by an officer of the Secretary of State⁵ (not being an officer of a prison)⁶. Any such direction must state the grounds for the confinement and the time during which it may continue⁷.

1 Prison Act 1952 s 14(6).

2 See PARA 522 ante.

3 Prison Rules 1999, SI 1999/728, r 48(1). Detailed guidance on the use of special cells is to be found in the Prison Service Order 1600, 'Use of Control and Restraint'. A special cell is usually equipped with a double-door, has no (or very little) access to natural light, is virtually sound-proof and is much smaller than a normal cell. Instead of a normal bed, there is usually a raised wooden platform on which is placed a removable mattress.

4 As to Boards of Visitors see PARA 511-513 ante.

5 He appointed under the Prison Act 1952 s 3(1) (as amended) (see PARA 505 ante). As to the Secretary of State see PARA 505 ante.

6 Prison Rules 1999, SI 1999/728, r 48(2).

7 Ibid r 48(2).

UPDATE

592-596 Special Control and Supervision, Restraint and Drug Testing

A prisoner may be placed under constant observation by means of an overt closed circuit television system if the governor considers it necessary on specified grounds: see the Prison Rules 1999, SI 1999/728, r 50A, PARA 595A.

594 Temporary confinement

TEXT AND NOTES 4-6--Words 'by a member of a Board of Visitors or' and '(not being an officer of a prison)' omitted: SI 1999/728 r 48(2) (amended by SI 2005/3437).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(ii) Special Control and Supervision, Restraint and Drug Testing/595. Restraints.

595. Restraints.

A prisoner may be put under restraint by order of the governor¹ if it is necessary to prevent the prisoner from injuring himself or others, damaging property or creating a disturbance², and the particulars must be recorded³. Notice of such an order must be given without delay to a member of the Board of Visitors and to the medical officer or a medical practitioner working within the prison⁴. The medical officer or medical practitioner must then inform the governor whether there are any medical reasons why the prisoner should not be put under restraint, and the governor must give effect to any recommendation made under this provision⁵. A prisoner must not be kept under restraint longer than necessary; and he must not be so kept for more than 24 hours except with a direction in writing given by a member of the Board of Visitors or by an officer of the Secretary of State⁶ (not being an officer of a prison), stating the grounds for the restraint and its duration⁷.

The only other purposes for which restraints may be used are for a prisoner's safe custody during removal, or on medical grounds by direction of the medical officer or a medical practitioner working within the prison⁸. No prisoner may be put under restraint as a punishment⁹. Restraints must be of a pattern authorised by the Secretary of State, and must be used in such manner and under such conditions as he may direct¹⁰.

1 See PARA 522 ante.

2 Prison Rules 1999, SI 1999/728, r 49(1). As with special cells (see PARA 594 ante), administrative policy on the use of approved restraints is contained in the Prison Service Order 1600, 'Use of Control and Restraint'.

3 Prison Rules 1999, SI 1999/728, r 49(5).

4 Ibid r 49(2). As to Boards of Visitors see PARAS 511-513 ante. As to the medical officer see PARA 580 ante. The reference to a medical practitioner working within the prison is to a medical practitioner such as is mentioned in r 20(3) (see PARA 580 ante): see r 49(2). As to the duties of chaplains and ministers in relation to prisoners under restraint see PARA 585 ante.

5 Ibid r 49(3).

6 He appointed under the Prison Act 1952 s 3(1) (as amended) (see PARA 505 ante). As to the Secretary of State see PARA 505 ante.

7 Prison Rules 1999, SI 1999/728, r 49(4). A prisoner whose restraint cannot be strictly justified by reference to the criteria in r 49(1) (see the text and note 2 supra) may recover damages in an action for assault and battery: *Rodrigues v Home Office* [1989] Legal Action 14 (prisoner wrongly held in a body belt for almost 24 hours; although the initial decision to place the prisoner in the body belt was reasonable because of his violent behaviour, staff were under a duty to remove the belt as soon as possible; use of a body belt is a wholly exceptional measure and mere threats and abuse by a prisoner are not enough to justify its application).

8 Prison Rules 1999, SI 1999/728, r 49(6).

9 Ibid r 49(6).

10 Ibid r 49(7). There is now only one approved method of mechanical restraint for both male and female prisoners, which is a body belt with iron cuffs: see Prison Service Order 1600, 'Use of Control and Restraint'. As to the approved conditions for use of such restraint see Prison Service Order 1600, 'Use of Control and Restraint'.

UPDATE

592-596 Special Control and Supervision, Restraint and Drug Testing

A prisoner may be placed under constant observation by means of an overt closed circuit television system if the governor considers it necessary on specified grounds: see the Prison Rules 1999, SI 1999/728, r 50A, PARA 595A.

595 Restraints

TEXT AND NOTES--As to observation of prisoners by means of an overt closed circuit television system see SI 1999/728 r 50A, PARA 595A.

TEXT AND NOTES 4-6--SI 1999/728 r 49(2) amended: SI 2005/3437, SI 2008/597, SI 2009/3082). SI 1999/728 r 49(3) amended: SI 2005/3437. SI 1999/728 r 49(4) amended: SI 2008/597, SI 2009/3082.

NOTE 9--SI 1999/728 r 49(6) amended: SI 2005/3437, SI 2009/3082.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(ii) Special Control and Supervision, Restraint and Drug Testing/595A. Observation of prisoners by means of an overt closed circuit television system.

595A. Observation of prisoners by means of an overt closed circuit television system.

Without prejudice to his other powers to supervise the prison, prisoners and other persons in the prison, whether by use of an overt closed circuit television system or otherwise, the governor may make arrangements for any prisoner to be placed under constant observation by means of an overt closed circuit television system while the prisoner is in a cell or other place in the prison if he considers that (1) such supervision is necessary for (a) the health and safety of the prisoner or any other person, (b) the prevention, detection, investigation or prosecution of crime, or (c) securing or maintaining prison security or good order and discipline in the prison; and (2) it is proportionate to what is sought to be achieved¹. If an overt closed circuit television system is used for these purposes, the governor is subject to rules² on the disclosure and retention of any material obtained³.

1 Prison Rules 1999, SI 1999/728, r 50A(1) (r 50A added by SI 2000/2641).

2 Ie SI 1999/728 rr 35C, 35D: see PARA 569.

3 Ibid r 50A(2) (as added: see NOTE 1).

UPDATE

592-596 Special Control and Supervision, Restraint and Drug Testing

A prisoner may be placed under constant observation by means of an overt closed circuit television system if the governor considers it necessary on specified grounds: see the Prison Rules 1999, SI 1999/728, r 50A, PARA 595A.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(ii) Special Control and Supervision, Restraint and Drug Testing/596. Compulsory testing for controlled drugs.

596. Compulsory testing for controlled drugs.

When, acting under the power to test prisoners for drugs¹, an officer requires a prisoner to provide a sample² for the purpose of ascertaining whether he has any controlled drug³ in his body, the prison officer must, so far as is reasonably practicable, inform the prisoner that he is being required to provide a sample in accordance with the statutory provisions⁴ and that a refusal to provide a sample may lead to disciplinary proceedings being brought against him⁵. The officer must require the prisoner to provide a fresh sample, free from any adulteration⁶, and must make arrangements and give the prisoner such instructions for its provision as may be reasonably necessary in order to prevent or detect its adulteration or falsification⁷. A prisoner who is required to provide a sample may be kept apart from other prisoners for a period not exceeding one hour to enable arrangements to be made for the provision of the sample⁸. A prisoner who is unable to provide a sample of urine when required to do so may be kept apart from other prisoners until he has provided the required sample, save that a prisoner may not be kept apart under this provision for a period of more than five hours⁹. A prisoner required to provide a sample of urine must be afforded such degree of privacy for the purposes of providing the sample as may be compatible with the need to prevent or detect any adulteration or falsification of the sample; and in particular a prisoner is not to be required to provide such a sample in the sight of a person of the opposite sex¹⁰.

1 I.e. the powers conferred by the Prison Act 1952 s 16A (as added) (see PARA 545 ante): see the Prison Rules 1999, SI 1999/728, r 50(1). Since the passing of the Prisons (Alcohol Testing) Act 1997 (which came into force on 21 May 1997: see s 3), there have been similar powers with regard to testing for alcohol (see the Prison Act 1952 s 16B (as added); and PARA 546 ante), but there is no detailed provision relating to alcohol testing in the Prison Rules 1999, SI 1999/728.

2 'Sample' means a sample of urine or any other descriptions of sample specified in the authorisation by the governor for the purposes of the Prison Act 1952 s 16A (as added): Prison Rules 1999, SI 1999/728, r 50(2).

3 'Controlled drug' means any drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1971 (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 238): Prison Rules 1999, SI 1999/728, r 2(1).

4 I.e. the Prison Act 1952 s 16A (as added) (see PARA 545 ante): see the Prison Rules 1999, SI 1999/728, r 50(3).

5 Ibid r 50(1), (3). The mandatory drugs testing provisions do not contravene the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Arts 6, 8 (see PARA 504 ante) as they neither violate the presumption of innocence nor do they amount to an unnecessary interference with privacy: *R v Secretary of State for the Home Department, ex p Tremayne* (2 May 1996, unreported).

6 Ibid r 50(4).

7 Ibid r 50(5).

8 Ibid r 50(6).

9 Ibid r 50(7).

10 Ibid r 50(8).

UPDATE

592-596 Special Control and Supervision, Restraint and Drug Testing

A prisoner may be placed under constant observation by means of an overt closed circuit television system if the governor considers it necessary on specified grounds: see the Prison Rules 1999, SI 1999/728, r 50A, PARA 595A.

596 Compulsory testing for controlled drugs

NOTE 3--As to compulsory testing for alcohol, see PARA 596A.

NOTE 5--As to random drug testing, see *R v Secretary for the Home Department, ex p Russell* (2000) Times, 31 August (randomness of selection a condition precedent of legality of random test). 'Fairness' under the European Convention on Human Rights art 6(1) does not require a prosecutor to be independent in a prison adjudication on a disciplinary offence: *R (on the application of Haase) v District Judge Nuttall* [2008] EWCA Civ 1089, [2009] QB 550, [2008] All ER (D) 118 (Oct).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(ii) Special Control and Supervision, Restraint and Drug Testing/596A. Compulsory testing for alcohol.

596A. Compulsory testing for alcohol.

When, acting under the power to test prisoners for alcohol¹, an officer requires a prisoner to provide a sample for the purpose of ascertaining whether he has any alcohol in his body, the officer must, so far as is reasonably practicable, inform the prisoner that he is being required to provide a sample in accordance with the statutory provisions² and that a refusal to provide a sample may lead to disciplinary proceedings being brought against him³. An officer requiring a sample must make arrangements and give the prisoner such instructions for its provision as may be reasonably necessary in order to prevent or detect its adulteration or falsification⁴. A prisoner who is required to provide a sample may be kept apart from other prisoners for a period not exceeding one hour to enable arrangements to be made for the provision of the sample⁵. However, prisoner who is unable to provide a sample of urine when required to do so may be kept apart from other prisoners until he has provided the required sample, except that a prisoner may not be kept apart under this provision for a period of more than five hours⁶. A prisoner required to provide a sample of urine must be afforded such degree of privacy for the purposes of providing the sample as may be compatible with the need to prevent or detect any adulteration or falsification of the sample; and in particular a prisoner is not be required to provide such a sample in the sight of a person of the opposite sex⁷.

1 Ie the powers conferred by the Prison Act 1952 s 16B (as added) (see PARA 546).

2 Ie the Prison Act 1952 s 16B.

3 Prison Rules 1999, SI 1999/728 r 50B(1), (2) (r 50B added by SI 2005/869).

4 SI 1999/728 r 50B(3) (r 50B as added: see NOTE 3).

5 Ibid r 50B(4) (r 50B as added: see NOTE 3).

6 Ibid r 50B(5) (r 50B as added: see NOTE 3).

7 Ibid r 50B(6) (r 50B as added: see NOTE 3).

UPDATE

592-596 Special Control and Supervision, Restraint and Drug Testing

A prisoner may be placed under constant observation by means of an overt closed circuit television system if the governor considers it necessary on specified grounds: see the Prison Rules 1999, SI 1999/728, r 50A, PARA 595A.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(iii) Disciplinary Offences and Punishments/597. Offences against discipline.

(iii) Disciplinary Offences and Punishments

597. Offences against discipline.

A prisoner is guilty of an offence¹ against discipline if he:

- 83 (1) commits any assault²;
- 84 (2) detains any person against his will³;
- 85 (3) denies access to any part of the prison to any officer or any person (other than a prisoner) who is at the prison for the purpose of working there⁴;
- 86 (4) fights with any person⁵;
- 87 (5) intentionally endangers the health or personal safety of others or, by his conduct, is reckless whether such health or personal safety is endangered⁶;
- 88 (6) intentionally obstructs an officer in the execution of his duty, or any person (other than a prisoner) who is at the prison for the purpose of working there, in the performance of his work⁷;
- 89 (7) escapes or absconds from prison or from legal custody⁸;
- 90 (8) fails to comply with any condition upon which he is temporarily released⁹;
- 91 (9) administers a controlled drug to himself or fails to prevent the administration of a controlled drug to him by another person¹⁰;
- 92 (10) is intoxicated as a consequence of knowingly consuming any alcoholic beverage¹¹;
- 93 (11) knowingly consumes any alcoholic beverage other than that provided to him pursuant to a written order of the medical officer or a registered medical practitioner working within the prison¹²;
- 94 (12) has in his possession any unauthorised article, or a greater quantity of any article than he is authorised to have¹³;
- 95 (13) sells or delivers to any person any unauthorised article¹⁴;
- 96 (14) sells or, without permission, delivers to any person any article which he is allowed to have only for his own use¹⁵;
- 97 (15) takes improperly any article belonging to another person or to a prison¹⁶;
- 98 (16) intentionally or recklessly sets fire to any part of a prison or any other property, whether or not his own¹⁷;
- 99 (17) destroys or damages any part of a prison or any other property, other than his own¹⁸;
- 100 (18) absents himself from any place he is required to be or is present at any place where he is not authorised to be¹⁹;
- 101 (19) is disrespectful to any officer, or any person (other than a prisoner) who is at the prison for the purpose of working there, or any person visiting a prison²⁰;
- 102 (20) uses threatening, abusive or insulting words or behaviour²¹;
- 103 (21) intentionally fails to work properly or, being required to work, refuses to do so²²;
- 104 (22) disobeys any lawful order²³;
- 105 (23) disobeys or fails to comply with any rule or regulation applying to him²⁴;
- 106 (24) receives any controlled drug, or, without the consent of an officer, any other article, during the course of a visit²⁵;
- 107 (25) attempts to commit²⁶, incites another prisoner to commit²⁷, or assists another prisoner to commit or to attempt to commit, any of the above offences²⁸.

1 An offence may be treated as committed in the prison in which the prisoner is currently detained: see the Criminal Justice Act 1961 s 23(1). The current list of disciplinary offences largely results from recommendations made by *Committee on the Prison Disciplinary System* (Cmnd 9641) (1985).

Where an offence against discipline is also a criminal offence, the disciplinary charge will generally not be proceeded with: see PARA 591 ante.

2 Prison Rules 1999, SI 1999/728, r 51(1).

3 Ibid r 51(2).

4 Ibid r 51(3).

5 Ibid r 51(4).

6 Ibid r 51(5).

7 Ibid r 51(6).

8 Ibid r 51(7). Escaping from prison is also a criminal offence at common law: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 741-742. See also *R v Hogan* [1960] 2 QB 513, [1960] 3 All ER 149, CCA; and PARA 591 ante. On an information in writing being laid before a magistrate and substantiated on oath, alleging that a convicted offender is unlawfully at large from a Prison Service establishment, the magistrate may issue a warrant to arrest him and bring him before the court, which, if satisfied as to the facts, must order him to be returned to the establishment where he is required to be detained: see the Criminal Justice Act 1967 s 72(1)(a), (2). A prisoner unlawfully at large may be arrested by a constable without warrant and returned to prison: see the Prison Act 1952 s 49(1) (as amended); and PARA 540 ante.

9 Prison Rules 1999, SI 1999/728, r 51(8). A prisoner may be temporarily released for specific purposes and subject to a satisfactory risk assessment in relation to the non-commission of offences whilst released and compliance with any conditions imposed on the grant of temporary release: see r 9; and PARA 612 post.

10 Ibid r 51(9). For the meaning of 'controlled drug' see PARA 596 ante. As to the collection of samples from prisoners for the purposes of conducting tests for controlled drugs see r 50; and PARA 596 ante.

It is a defence for a prisoner charged with an offence under r 51(9) to show that:

- 22 (1) the controlled drug had been, prior to its administration, lawfully in his possession for his use or was administered to him in the course of a lawful supply of the drug to him by another person (r 52(a));
- 23 (2) the controlled drug was administered by or to him in circumstances in which he did not know and had no reason to suspect that such a drug was being administered (r 52(b)); or
- 24 (3) the controlled drug was administered by or to him under duress or to him without his consent in circumstances where it was not reasonable for him to have resisted (r 52(c)).

11 Ibid r 51(10).

12 Ibid r 51(11). Intoxicating liquor is only allowed to a prisoner under a written order of the medical officer or a registered medical practitioner working within the prison: see r 25(1); and PARA 574 ante. A registered medical practitioner working within the prison is a medical practitioner such as is mentioned in the Prison Rules 1999, SI 1999/728, r 20(3): see PARA 580 ante. As to the medical officer see PARA 580 ante.

13 Ibid r 51(12). As to the articles which a prisoner is authorised to have in his possession see PARA 567 ante.

14 Ibid r 51(13).

15 Ibid r 51(14).

16 Ibid r 51(15).

17 Ibid r 51(16).

18 Ibid r 51(17).

19 Ibid r 51(18).

- 20 Ibid r 51(19).
- 21 Ibid r 51(20).
- 22 Ibid r 51(21).
- 23 Ibid r 51(22). As to what may constitute a lawful order see PARA 589 ante.
- 24 Ibid r 51(23).
- 25 Ibid r 51(24). For these purposes, a visit does not include an interview with a legal adviser (see r 38; and PARAS 606-607 post): see r 51(24).
- 26 Ibid r 51(25)(a). As to attempts to commit a crime see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 79 et seq.
- 27 Ibid r 51(25)(b).
- 28 Ibid r 51(25)(c).

UPDATE

597 Offences against discipline

TEXT AND NOTES--For the purposes of SI 1999/728 r 51, words, behaviour or material are racist if they demonstrate, or are motivated (wholly or partly) by, hostility to members of a racial group (whether identifiable or not) based on their membership (or presumed membership) of a racial group, and 'membership', 'presumed', 'racial group' and 'racially aggravated', have the meanings assigned to them by the Crime and Disorder Act 1998 s 28 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 154): SI 1999/728 r 51A (added by SI 2000/1794).

TEXT AND NOTE 2--A prisoner is guilty of an offence against discipline if he commits any racially aggravated assault: SI 1999/728 r 51(1A) (added by SI 2000/1794).

TEXT AND NOTE 10--Now head (9) is found with any substance in his urine which demonstrates that a controlled drug has, whether in prison or while on temporary release under SI 1999/728 r 9, been administered to him by himself or by another person (but subject to r 52): r 51(9) (substituted by SI 2005/869).

TEXT AND NOTES 11, 12--Now heads (10) is intoxicated as a consequence of consuming any alcoholic beverage; (11) consumes any alcoholic beverage whether or not provided to him by another person: SI 1999/728 r 51(10), (11) (substituted by SI 2005/869). As to the collection of samples from prisoners for the purposes of conducting tests for alcohol, see SI 1999/728 r 50B: and PARA 596A.

It is a defence for a prisoner charged with an offence under SI 1999/728 r 51(10) or (11) (as substituted) to show that:

- (1) the alcohol was consumed by him in circumstances in which he did not know and had no reason to suspect that he was consuming alcohol; or
- (2) the alcohol was consumed by him without his consent in circumstances where it was not reasonable for him to have resisted: r 52A (added by SI 2005/869, amended by SI 2005/3437).

TEXT AND NOTE 18--A prisoner is guilty of an offence against discipline if he causes racially aggravated damage to, or destruction of, any part of a prison or any other property, other than his own: SI 1999/728 r 51(17A) (added by SI 2000/1794).

TEXT AND NOTE 21--A prisoner is guilty of an offence against discipline if he uses threatening, abusive or insulting words or behaviour: SI 1999/728 r 51(20A) (added by SI 2000/1794). See *R (on the application of Gleaves) v Secretary of State for the Home Department* [2004] EWHC 2522 (Admin), [2004] All ER (D) 154 (Nov).

NOTE 23--See *R (on the application of Haase) v District Judge Nuttall* [2008] EWCA Civ 1089, [2009] QB 550, [2008] All ER (D) 118 (Oct); and PARA 596.

TEXT AND NOTE 25--A prisoner is guilty of an offence against discipline if he displays, attaches or draws on any part of a prison, or on any other property, threatening, abusive or insulting words, drawings, symbols or other material: SI 1999/728 r 51(24A) (added by SI 2000/1794).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(iii) Disciplinary Offences and Punishments/598. Pre-hearing procedures.

598. Pre-hearing procedures.

Where a prisoner is to be charged with an offence against discipline, the charge must be laid as soon as possible and, save in exceptional circumstances, within 48 hours of the discovery of the offence¹. Every charge must be inquired into by the governor². The charge must be first inquired into not later, save in exceptional circumstances, than the day after it has been laid, provided that is not a Sunday or public holiday³. The prisoner must be informed of the charge against him as soon as possible and, in any case, before the governor's inquiry⁴. A prisoner who is to be charged may be kept apart from other prisoners pending the governor's first inquiry⁵.

¹ Prison Rules 1999, SI 1999/728, r 53(1). This requirement is mandatory rather than directory and it follows that the governor may not allow a lesser charge to be preferred at the final hearing to cure a defect in the original charge which had been timeously preferred: *R v Dartmoor Prison Board of Visitors, ex p Smith* [1987] QB 106, [1986] 2 All ER 651, CA. The duty to charge within 48 hours applies irrespective of whether any portion of the 48 hours includes a weekend or public holiday. The charge should normally be laid by the officer who witnessed the incident or against whom the alleged offence is committed: see the Prison Service Discipline Manual para 2.1. Officers are advised to consult a senior member of staff to ensure that the correct charge is laid: Prison Service Discipline Manual para 2.2. Prisoners charged are required to be given a Notice of Report (Form 1127), which sets out the notice of the offence charged, and the notice should be sufficiently detailed as to leave prisoners in no doubt as to what is alleged against them: Prison Service Discipline Manual para 2.11.

² Prison Rules 1999, SI 1999/728, r 53(2). See also PARA 522 ante.

³ Ibid r 53(3).

⁴ See ibid r 54(1). See also *R v Board of Visitors of Long Lartin Prison, ex p Cunningham* (17 May 1988, unreported), DC; *R v Board of Visitors of Swansea Prison, ex p Scales* (1985) Times, 21 February, DC.

⁵ Prison Rules 1999, SI 1999/728, r 53(4). The power to segregate may only be used for the period between the alleged offence and the initial hearing. It should not be an automatic measure but should be used only where there is a real need, such as the risk of collusion or intimidation relating to the alleged offence which segregation of the accused might prevent: Prison Service Discipline Manual para 4.17. If the governor's initial hearing is inconclusive but the need for segregation is still felt to exist, it may only be authorised under the Prison Rules 1999, SI 1999/728, r 45 (see PARA 592 ante) for the maintenance of good order and discipline: see the Prison Service Discipline Manual para 4.18.

UPDATE

598 Pre-hearing procedures

TEXT AND NOTE 2--For 'governor' read 'governor or, as the case may be, the adjudicator': SI 1999/728 r 53(2) (amended by SI 2002/2116). For the meaning of 'adjudicator' see PARA 598A NOTE 2. The governor has to determine the mode of inquiry: see PARA 598A.

TEXT AND NOTE 3--Now, every charge must be first inquired into not later, save in exceptional circumstances or in accordance with SI 1999/728 r 55A(5) (see PARA 601A), than (1) where it is inquired into by the governor, the next day, not being a Sunday or public holiday, after it is laid; (2) where it is referred to the adjudicator, 28 days after it is so referred: r 53(3) (substituted by SI 2002/2116). As to determination of the mode of inquiry see PARA 598A.

TEXT AND NOTE 4--Refers also to the adjudicator's inquiry (see TEXT AND NOTE 2).

TEXT AND NOTE 5--A prisoner so charged may also be kept apart pending a determination under SI 1999/728 r 53A (see PARA 598A): r 53(4) (amended by SI 2002/2116).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(iii) Disciplinary Offences and Punishments/598A. Determination of mode of inquiry.

598A. Determination of mode of inquiry.

Before inquiring into a charge of an offence against discipline, the governor must determine whether it is so serious that additional days should be awarded for the offence, if the prisoner is found guilty¹. Where the governor determines that it is so serious he must (1) refer the charge to an adjudicator² for him to inquire into it; (2) refer any other charge arising out of the same incident to an adjudicator for him to inquire into it; and (3) inform the prisoner who has been charged that he has done so³. Where he determines that it is not so serious, he must proceed to inquire into the charge⁴.

If at any time during an inquiry into a charge by the governor, or following such an inquiry, after he has found the prisoner guilty of an offence but before he has imposed a punishment for that offence, it appears to him that the charge is so serious that additional days should be awarded for the offence if the prisoner is found guilty, the governor must act in accordance with heads (1)-(3) above and the adjudicator must first inquire into any charge so referred not later than, save in exceptional circumstances, 28 days after the charge was referred⁵.

1 Prison Rules 1999, SI 1999/728, r 53A(1) (r 53A added by SI 2002/2116).

2 'Adjudicator' means a District Judge (Magistrates' Courts) or Deputy District Judge (Magistrates' Courts) approved by the Lord Chancellor for the purpose of inquiring into a charge which has been referred to him: SI 1999/728 reg 2(1) (definition added by SI 2002/2116, substituted by SI 2005/869). Any appointment to the office of adjudicator in exercise of the function under SI 1999/728 must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 3 (as amended by Judicial Appointments and Discipline (Modification of Offices) Order 2006, SI 2006/678), in accordance with the 2005 Act ss 85-93, 96: see COURTS vol 10 (Reissue) PARA 515B.18.

3 SI 1999/728 r 53A(2)(a) (r 53A as added: see NOTE 1).

4 Ibid r 53A(2)(b) (r 53A as added: see NOTE 1).

5 Ibid r 53A(3) (r 53A as added: see NOTE 1).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(iii) Disciplinary Offences and Punishments/599. Legal representation at disciplinary hearings.

599. Legal representation at disciplinary hearings.

A prisoner does not enjoy a statutory right to be legally represented before the governor when he adjudicates upon an alleged offence against discipline¹. However, the governor is required to allow any prisoner who asks to consult a solicitor before an adjudication to be allowed to do so², and to ask every prisoner at the start of every hearing whether he wishes to request legal assistance or representation at the hearing³. In considering whether to grant legal representation in an individual case, the governor must take account of at least the following factors: (1) the seriousness of the charge and the potential penalty; (2) the likelihood that difficult points of law might arise; (3) the capacity of the prisoner to present his own case; (4) procedural difficulties, such as the inability of the prisoner to trace or interview witnesses in advance of the hearing; (5) the need for reasonable speed in deciding cases; and (6) the need for fairness between prisoners and prison officers⁴.

1 Prior to the abolition of the disciplinary functions of Boards of Visitors in 1992 it had been established that boards enjoyed a discretion to grant legal representation to prisoners appearing before them in their disciplinary capacity and that a failure to consider exercising such discretion was unlawful: *R v Secretary of State for the Home Department, ex p Tarrant* [1985] QB 251, [1984] 1 All ER 799. It had also been established that prisoners did not enjoy a common law right to legal representation before Boards of Visitors: *R v Board of Visitors of HM Prison, The Maze, ex p Hone* [1988] AC 379, sub nom *Hone and McCartan v Board of Visitors, Maze Prison* [1988] 1 All ER 321, HL.

To date, the right to legal representation has not been established under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 5 or Art 6 (see PARA 504 ante): *Kiss v United Kingdom* 7 DR 55 (1976). See also *Campbell and Fell v United Kingdom* (1984) 7 EHRR 165.

Now that the governor is the sole adjudicating authority in relation to prison disciplinary offences and since it was established that the disciplinary decisions of governors are amenable to judicial review (see *Leech v Deputy Governor of Parkhurst Prison* [1988] AC 533, [1988] 1 All ER 485, HL), it seems that the same principles which governed the conduct of disciplinary hearings before Boards of Visitors apply to governors' disciplinary hearings.

2 Prison Service Discipline Manual para 3.1.

3 Prison Service Discipline Manual para 3.3. The Prison Service Discipline Manual distinguishes between legal assistance from a friend or adviser (sometimes known as a McKenzie friend) and the more formal grant of legal representation.

4 *R v Secretary of State for the Home Department, ex p Tarrant* [1985] QB 251, [1984] 1 All ER 799. So long as the governor properly addresses all factors relevant to the grant of legal representation, a decision to refuse a request for representation will rarely be interfered with: *R v Board of Visitors HM Prison Blundeston, ex p Norley* (4 July 1984, unreported), DC; *R v Board of Visitors of Swansea Prison, ex p McGrath* (1984) Times, 21 November, DC; *R v Board of Visitors of Risley Remand Centre, ex p Draper* (1988) Times, 24 May, CA. See also *Re Reynolds' Application* [1987] 8 NIJB 82, 54 P&CR 121.

UPDATE

599 Legal representation at disciplinary hearings

TEXT AND NOTES--At an inquiry into a charge of an offence against discipline which has been referred to the adjudicator (see PARA 598A), the prisoner who has been charged must be given the opportunity to be legally represented: SI 1999/728 r 54(3) (added by SI 2002/2116).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(iii) Disciplinary Offences and Punishments/600. The hearing.

600. The hearing.

The Secretary of State¹ must make rules for ensuring that a prisoner charged with any offence is given a proper opportunity of presenting his case². Accordingly, at an inquiry into a charge against a prisoner, he must be given a full opportunity of hearing what is alleged against him and of presenting his own case³. A governor's conduct of a disciplinary hearing is susceptible to judicial review⁴ which will lie where there has been such unfairness as to cause substantial injustice⁵. While prison disciplinary hearings are not to be treated as equivalent to courts of law in terms of the rules of evidence and procedure, the overriding obligation is to ensure that prisoners are given a fair hearing⁶. In particular, the prisoner has to be told what evidence has been given and what statements have been made affecting him⁷, and he must then be given a fair opportunity to correct or contradict them; there is thus a right to call witnesses⁸. Although the hearing is not subject to the ordinary rules of evidence in criminal cases, so that hearsay evidence is admissible, the overriding obligation to afford a fair hearing may oblige the governor not only to inform the prisoner of the hearsay evidence but also to give him a sufficient opportunity to deal with it, which in certain cases may well involve the cross-examination of the witness whose evidence is before the governor in the form of hearsay, failing which the hearsay evidence should be excluded⁹. The prisoner must be allowed to put questions to witnesses¹⁰, although it is not improper for the governor to insist that all questions to witnesses must be put through him¹¹. It is a breach of natural justice for a prison officer to fail to bring to the governor's attention the fact that he knew of a witness to support the prisoner's case¹². Any deviation from the normal procedure should be clearly explained to the prisoner and the prisoner should be allowed to comment on the evidence at the end of the case¹³. Where evidence (expert or otherwise) emerges which shows that the prisoner was not mentally responsible for his actions at the time of the offence or that he is not fit to be adjudicated upon, the governor should dismiss the charge or, in the latter case, decline to proceed with the adjudication¹⁴.

A governor must ensure that his conduct of the hearing does not offend against the principle that justice must be seen to be done¹⁵. The standard of proof in relation to all disciplinary offences is the criminal one, that is, proof beyond reasonable doubt¹⁶. Disciplinary offences are to be strictly construed and generally require proof of mens rea in line with criminal law principles¹⁷. The rule against bias applies to a governor conducting a disciplinary adjudication but an accusation of bias based merely on the governor's previous dealings with a prisoner in either a disciplinary or administrative context will not be sufficient¹⁸. Where, on an application for judicial review, there is a conflict of evidence between a prisoner's affidavit and that of the record of hearing, the court can decide which is more accurate without calling the governor for cross-examination¹⁹. A governor's adjudication may be quashed by certiorari if there has been a breach of natural justice, even where the fault is not that of the governor²⁰.

1 As to the Secretary of State see PARA 505 ante.

2 See the Prison Act 1952 s 47(2); and PARA 502 ante.

3 Prison Rules 1999, SI 1999/728, r 54(2). As to legal representation see PARA 599 ante. See also *R v Governor of Swaleside Prison, ex p Wynter* (1998) Times, 2 June, DC.

4 *Leech v Deputy Governor of Parkhurst Prison, ex p Leech* [1988] AC 533, [1988] 1 All ER 485, HL.

- 5 *R v Board of Visitors of Hull Prison, ex p St Germain* [1979] QB 425, [1979] 1 All ER 701, CA. It has been said that governors' hearings should be conducted in a 'firm, fair and crisp manner': *Re McEvoy's Application* (1991) 8 NIJB 89.
- 6 *R v Hull Prison Board of Visitors, ex p St Germain (No 2)* [1979] 3 All ER 545, [1979] 1 WLR 1401, DC. Detailed guidance on the conduct of disciplinary hearings designed to ensure fairness and consistency of approach is set out in the Prison Service Discipline Manual. Adjudicators should ensure that the general atmosphere is as relaxed as possible while maintaining sufficient formality to emphasise the importance of the proceedings: Prison Service Discipline Manual para 4.7. Prisoners must be allowed to sit at a table and be provided with writing material throughout the adjudication: Prison Service Discipline Manual para 4.10. Prisoners should be given a copy of Form 1145 (Explanation of Procedure at Disciplinary Charge Hearing) and should have access to the Prison Service Discipline Manual: Prison Service Discipline Manual para 2.22. It has been held, however, that refusal to allow a prisoner a copy of the Prison Service Discipline Manual will not invalidate the adjudication if the court is satisfied that the prisoner was well aware of its contents: *R v Governor of Pentonville Prison, ex p Watkins* [1992] COD 329, DC. Governors must exercise their discretion in relation to the conduct of a hearing along similar lines to a magistrates' court and must therefore consider whether to hear separate charges at different times or whether a different governor should hear any of the separate charges: *R v Board of Visitors of Walton Prison, ex p Weldon* [1985] Crim LR 514, (1985) Times, 6 April. Prison disciplinary proceedings may amount to criminal proceedings within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 6(1) (see PARA 504 ante), depending on the classification in domestic law of the offence in question, the nature of the offence itself and, perhaps most importantly given the governor's current powers of punishment, the nature and severity of the penalty faced: *Campbell and Fell v United Kingdom* (1984) 7 EHRR 165. See also *Pelle v France* 50 DR 263 (1986).
- 7 A prisoner has no right to obtain access to the previous statements of witnesses who give evidence against him: *R v Board of Visitors of Albany Prison, ex p Mayo* (18 March 1985, unreported), DC. However, where a prisoner claims that there is a discrepancy between what a witness has said at an earlier stage of the disciplinary process and what he is now saying, it would be unfair to refuse him access to the earlier record of proceedings: *R v Board of Visitors of Gartree Prison, ex p Mealey* (1981) Times, 14 November, DC. As to the right of access to welfare reports prepared upon them and relevant to the disciplinary proceedings see *R v Board of Visitors of Wandsworth Prison, ex p Raymond* (1985) Times, 17 June, DC.
- 8 *R v Hull Prison Board of Visitors, ex p St Germain (No 2)* [1979] 3 All ER 545, [1979] 1 WLR 1401, DC; *R v Board of Visitors of Nottingham Prison, ex p Moseley* (1981) Times, 23 January, DC. The governor has no power to compel a witness to attend who does not wish to do so but the courts can issue subpoenas to assist inferior tribunals exercising judicial functions: *Currie v Chief Constable of Surrey* [1982] 1 All ER 89, [1982] 1 WLR 215. See also CPR 34.4. As to the CPR see PARA 609 note 12 post; and CIVIL PROCEDURE.
- 9 *R v Hull Prison Board of Visitors, ex p St Germain (No 2)* [1979] 3 All ER 545, [1979] 1 WLR 1401, DC. See also *R v Governor of Swaleside Prison, ex p Wynter* (1998) Times, 2 June, DC.
- 10 *R v Board of Visitors of Gartree Prison, ex p Mealy* (1981) Times, 14 November, DC.
- 11 *R v Hull Prison Board of Visitors, ex p St Germain (No 2)* [1979] 3 All ER 545 at 549-550, [1979] 1 WLR 1401 at 1406, DC, per Geoffrey Lane LJ.
- 12 *R v Blundeston Prison Board of Visitors, ex p Fox-Taylor* [1982] 1 All ER 646, [1982] Crim LR 119, DC.
- 13 *R v Board of Visitors of Gartree Prison, ex p Mealy* (1981) Times, 14 November, DC.
- 14 *R v Secretary of State for the Home Department, ex p Lee* (19 February 1987, unreported), DC.
- 15 *R v Governor of Pentonville Prison, ex p Watkins* [1992] COD 329, DC.
- 16 *R v Secretary of State for the Home Department, ex p Tarrant* [1985] QB 251, [1984] 1 All ER 799, DC.
- 17 *R v Deputy Governor of Camphill Prison, ex p King* [1985] QB 735, [1984] 3 All ER 897, CA, (in the context of shared accommodation, consideration must be given to whether the prisoner had control over an unauthorised article, not merely whether he knew the article to be in the cell). For further support for the view that disciplinary offences should be construed in line with criminal law principles see *R v Board of Visitors of Highpoint Prison, ex p McConke* (1982) Times, 23 September, DC; *R v Board of Visitors of Thorp Arch Prison, ex p De Houghton* (1987) Times, 22 October, DC.
- 18 The courts considered the issue of bias in the context of the (now abolished) disciplinary functions of Boards of Visitors and concluded that the appropriate test was whether a reasonable and fair-minded bystander, knowing all the facts, would have a reasonable suspicion that a fair trial was not possible: *R v Board of Visitors of Frankland Prison, ex p Lewis* [1986] 1 All ER 272, [1986] 1 WLR 130. For the application of this principle to governors' hearings see *R v HM Prison Service, ex p Hibbert* (16 January 1997, unreported), DC.

19 *R v Board of Visitors of Nottingham Prison, ex p Moseley* (1981) Times, 23 January. Cf *R v Board of Visitors of Hull Prison, ex p St Germain (No 2)* [1979] 3 All ER 545, [1979] 1 WLR 1401, DC.

20 *R v Blundeston Prison Board of Visitors, ex p Fox-Taylor* [1982] 1 All ER 646, [1982] Crim LR 119 DC.

UPDATE

600 The hearing

TEXT AND NOTES 6, 15--A prison governor is answerable to the Home Office, and has the role of drafting and laying charges against prisoners in disciplinary proceedings, of investigating and prosecuting those charges and determining the accused's guilt or innocence, and of deciding any sentence to be imposed. This lack of structural independence between his prosecuting and adjudicating roles gives legitimacy to misgivings about the independence and impartiality of his adjudications: Applications 46387/99, 48906/99, 57410/00 and 57419/00 *Whitfield v United Kingdom* [2005] All ER (D) 97 (Apr), ECtHR. Unless a penalty is imposed, disciplinary proceedings are not criminal proceedings but are properly categorised as administrative: *R (on the application of Napier) v Secretary of State for the Home Department* [2004] EWHC 936 (Admin), [2005] 3 All ER 77.

NOTE 6--See also Application 60682/00 *Young v United Kingdom* (2007) 45 EHRR 689, ECtHR.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(iii) Disciplinary Offences and Punishments/601. Disciplinary awards.

601. Disciplinary awards.

If he finds a prisoner guilty of an offence against discipline, the governor may impose one or more of the following punishments:

- 108 (1) caution¹;
- 109 (2) forfeiture for a period not exceeding 42 days of any privileges²;
- 110 (3) exclusion from associated work³ for a period not exceeding 21 days⁴;
- 111 (4) stoppage of or deduction from earnings for a period not exceeding 84 days and of an amount not exceeding 42 days' earnings⁵;
- 112 (5) cellular confinement⁶ for a period not exceeding 14 days⁷;
- 113 (6) in the case of a short term or long term prisoner⁸, an award of additional days⁹ not exceeding 42 days¹⁰;
- 114 (7) in the case of an unconvicted prisoner otherwise entitled to them¹¹, forfeiture for any period of the right to have certain articles¹².

In the case of an offence against discipline committed by an inmate who was under the age of 21 when the offence was committed (other than an offender in relation to whom the Secretary of State has given a direction that he is to be treated as if he had been sentenced to imprisonment¹³) the above punishments apply save that (a) the maximum period of forfeiture of privileges is 21 days¹⁴; (b) the maximum period of stoppage of or deduction from earnings is 42 days and the maximum amount is 21 days' earnings¹⁵; and (c) the maximum period of cellular confinement is seven days¹⁶.

An award of a caution must not be combined with any other punishment for the same charge¹⁷. If a prisoner is found guilty of more than one charge arising out of an incident, punishments may be ordered to run consecutively but, in the case of an award of additional days, the total period added must not exceed 42 days and, in the case of cellular confinement, the total period must not exceed 14 days¹⁸. When considering the imposition of a punishment, the governor must take into account any guidelines that the Secretary of State may from time to time issue as to the level of punishment that should normally be imposed for a particular offence against discipline¹⁹.

Where an offence against discipline is committed by a prisoner who is detained only on remand, additional days may be awarded notwithstanding that the prisoner has not (or had not at the time of the offence) been sentenced²⁰. Any such award of additional days has effect only if the prisoner in question subsequently becomes a short term or long term prisoner whose sentence is reduced²¹ by a period which includes the time when the offence against discipline was committed²².

In relation to any existing prisoner or existing licensee²³ who has forfeited any remission of his sentence, the provisions relating to early release²⁴ apply as if he had been awarded such number of additional days as equals the number of days of remission which he has forfeited²⁵.

1 Prison Rules 1999, SI 1999/728, r 55(1)(a). See also the text and note 17 *infra*.

2 *Ibid* r 55(1)(b). As to privileges see r 8; and PARA 568 *ante*.

3 See *ibid* r 31(1); and PARA 577 ante. The exclusion is from associated work, so that the prisoner may be required to work in a cell. This punishment should not include loss of recreational or other association but, if combined with loss of the privilege of association under forfeiture of privileges (see head (2) in the text), the punishment becomes indistinguishable from cellular confinement (see head (5) in the text).

4 *Ibid* r 55(1)(c).

5 *Ibid* r 55(1)(d).

6 A prisoner undergoing cellular confinement may have his rights to visits deferred until the period of cellular confinement has expired: see PARA 571 ante.

7 Prison Rules 1999, SI 1999/728, r 55(1)(e). When it is proposed to impose a punishment of cellular confinement, the medical officer or a registered medical practitioner working within the prison must inform the governor whether there are any medical reasons why the prisoner should not be so dealt with: r 58. The governor must give effect to any recommendation which may be made under this provision: r 58. A registered medical practitioner working within the prison is a medical practitioner such as is mentioned in the Prison Rules 1999, SI 1999/728, r 20(3) (see PARA 580 ante): see r 58. As to the medical officer see PARA 580 ante.

8 'Short term prisoner' and 'long term prisoner' have the meanings assigned to them by the Criminal Justice Act 1991 s 33(5), as extended by s 43(1) and s 45(1) (see PARA 617 notes 2-3 post): Prison Rules 1999, SI 1999/728, r 2(1).

9 Any reference to an award of additional days means additional days awarded under the Prison Rules 1999, SI 1999/728, by virtue of the Criminal Justice Act 1991 s 42: Prison Rules 1999, SI 1999/728, r 2(2)(a). Life sentence prisoners are not subject to an award of additional days but, where at the time of the hearing the prisoner has been given a prospective release date, a recommendation may be given to the Secretary of State or Parole Board that this date should be postponed: Prison Service Discipline Manual para 7.27. The additional days awarded will also be recorded on the prisoner's record which will be available to the Parole Board when it considers whether a life sentence prisoner can be recommended for release. The tariff set for discretionary life sentence prisoners in accordance with the Crime (Sentences) Act 1997 s 28 is unaffected by any award of additional days. As to the Secretary of State see PARA 505 ante. As to the Parole Board see PARAS 618-619 post.

10 Prison Rules 1999, SI 1999/728, r 55(1)(f).

11 *Ie* under *ibid* r 43(1) (see PARA 697 post): see r 55(1)(g). As to unconvicted prisoners see PARA 694 et seq post.

12 *Ibid* r 55(1)(g).

13 *Ie* under the Criminal Justice Act 1982 s 13(1): see the Prison Rules 1999, SI 1999/728, s 57(1).

14 *Ibid* r 57(1)(a). See also head (2) in the text.

15 *Ibid* r 57(1)(b). See also head (4) in the text.

16 *Ibid* r 55(1)(c). See also head (5) in the text.

17 *Ibid* r 55(2).

18 *Ibid* r 55(3).

19 *Ibid* r 55(4).

20 *Ibid* r 59(1). As to remand centres see PARA 701 post.

21 *Ie* under the Criminal Justice Act 1967 s 67 (as amended): see the Prison Rules 1999, SI 1999/728, r 59(2).

22 *Ibid* r 59(2).

23 For these purposes, 'existing prisoner' and 'existing licensee' have the meanings assigned to them by the Criminal Justice Act 1991 s 101(1), Sch 12 para 8(1) (see PARA 617 note 17 post): Prison Rules 1999, SI 1999/728, r 56(1).

24 *Ie* the Criminal Justice Act 1991 Pt II (ss 32-51) (as amended) (see PARA 617 et seq post): see the Prison Rules 1999, SI 1999/728, r 56(2).

25 Ibid r 56(2).

UPDATE

601 Disciplinary awards

TEXT AND NOTES--As to the punishments which an adjudicator may impose where a matter has been referred to him under SI 1999/728 r 53A, see PARA 601A; and as to the prisoner's right to review of an adjudicator's punishment, see PARA 601B.

TEXT AND NOTES 1-12--Also, head (8) removal from the prisoner's wing or living unit for a period of 28 days: SI 1999/728 r 55(1)(h) (added by SI 2002/2116). Following the imposition of this punishment, a prisoner must be accommodated in a separate part of the prison under such restrictions of earnings and activities as the Secretary of State may direct: SI 1999/728 reg 59A (added by SI 2002/2116).

TEXT AND NOTE 5--Words 'and from ... 42 days earnings' omitted: SI 1999/728 r 55(1)(d) (amended by SI 2002/2116).

TEXT AND NOTE 7--For '14 days' read '21 days': SI 1999/728 r 55(1)(e) (amended by SI 2002/2116).

NOTE 7--Before deciding whether to impose a punishment of cellular confinement the governor, adjudicator or reviewer must first enquire of a registered medical practitioner or registered nurse working within the prison as to whether there are any medical reasons why the punishment is unsuitable and must take this advice into account when making his decision: r 58 (substituted by SI 2005/3437; and amended by SI 2009/3082).

NOTE 9--1991 Act s 42 amended: Criminal Justice Act 2003 Sch 20 para 2. Section 257 will replace the 1991 Act s 42 (prospectively repealed: 2003 Act s 303(a), Sch 37 Pt 7). SI 1999/728 r 2(2)(a) amended to take account of the 2003 Act s 257: SI 2005/3437.

See also *R (on the application of Greenfield) v Secretary of State for the Home Department* [2005] UKHL 14, [2005] 1 WLR 673; *R (on the application of Al-Hasan) v Secretary of State for the Home Department*; *R (on the application of Carroll) v Secretary of State for the Home Department* [2005] UKHL 13, [2005] 1 All ER 927.

TEXT AND NOTE 10--Head (6) omitted: SI 2002/2116.

TEXT AND NOTES 13-16--Also, head (d) the maximum period of removal from the prisoner's cell or living unit is 21 days: SI 1999/728 r 57(1)(d) (added by SI 2002/2116). The punishments set out in heads (1)-(7) in the text apply, with the same modifications set out in heads (a)-(d), to the adjudicator's punishments: SI 1999/728 r 57(1) (amended by SI 2002/2116).

TEXT AND NOTE 15--Words, 'and the maximum amount is 21 days' omitted: SI 1999/728 r 57(1)(b) (amended by SI 2002/2116).

TEXT AND NOTE 16--For 'seven days' read 'ten days': SI 1999/728 r 57(1)(c) (amended by SI 2002/2116).

TEXT AND NOTE 17--Words 'an award of' omitted: SI 1999/728 reg 55(2) (amended by SI 2002/2116).

TEXT AND NOTE 18--Words 'in the case of an award of ... 42 days and' omitted and for '14 days' read 'seven days': r 55(3) (amended by SI 2002/2116).

NOTE 20--Additional days may also be awarded by the adjudicator: SI 1999/728 r 59(1) (amended by SI 2002/2116).

NOTE 21--Or under the 2003 Act s 240: SI 1999/728 r 59(2) (amended by SI 2005/3437).
Criminal Justice Act 1967 s 67 repealed: Crime (Sentences) Act 1997 Sch 6.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(iii) Disciplinary Offences and Punishments/601A. Adjudicator's punishments.

601A. Adjudicator's punishments.

If an adjudicator¹ finds a prisoner guilty of an offence against discipline, he may impose one or more of the following punishments:

- (1) any of the punishments which may be imposed by a governor²;
- (2) in the case of a short-term prisoner or long-term prisoner or fixed-term prisoner, an award of additional days not exceeding 42 days³.

If a prisoner is found guilty of more than one charge arising out of an incident, punishments may be ordered to run consecutively but, in the case of an award of additional days, the total period added must not exceed 42 days and, in the case of a punishment of cellular confinement, the total period must not exceed 21 days⁴.

A caution must not be combined with any other punishment for the same charge⁵.

1 For the meaning of 'adjudicator' see PARA 598A NOTE 2.

2 Ie any punishment imposed under the Prison Rules 1999, SI 1999/728, r 55 (see PARA 601).

3 Ibid r 55A(1) (r 55A added by SI 2002/2166, amended by SI 2005/3437). 'Fixed term prisoner' has the meaning assigned to it by the Criminal Justice Act 2003 s 237(1): SI 1999/728 r 2(1) (definition added by SI 2005/3437).

4 SI 1999/728 r 55A(3) (r 55A as added: see NOTE 3).

5 Ibid r 55A(2) (r 55A as added: see NOTE 3).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(iii) Disciplinary Offences and Punishments/601B. Review of Adjudicator's punishment.

601B. Review of Adjudicator's punishment.

Where a punishment is imposed by an adjudicator¹ a prisoner may, within 14 days of receipt of the punishment, request in writing that a reviewer² conducts a review³. The review must be commenced within 14 days of receipt of the request and must be conducted on the papers alone⁴. The review must only be of the punishment imposed and must not be a review of the finding of guilt⁵. On completion of the review, if it appears to the reviewer that the punishment imposed was manifestly unreasonable, he may:

- (1) reduce the number of any additional days awarded;
- (2) for whatever punishment has been imposed by the adjudicator, substitute another punishment which is, in his opinion, less severe; or
- (3) quash the punishment entirely⁶.

A prisoner requesting a review must serve any additional days awarded⁷ unless or until they are reduced⁸.

¹ *Ie* under the Prison Rules 1999, SI 1999/728, r 55A(1) (see PARA 601A). For the meaning of 'adjudicator' see PARA 598A.

² 'Reviewer' means the Senior District Judge (Chief Magistrate) or any deputy of such a judge as nominated by that judge: r 55B(1) (r 55B added by SI 2005/869; and amended by SI 2006/680).

³ SI 1999/728 r 55B(2) (as added: see NOTE 2).

⁴ *Ibid* r 55B(3) (as added: see NOTE 2).

⁵ *Ibid* r 55B(4) (as added: see NOTE 2).

⁶ *Ibid* r 55B(5) (as added: see NOTE 2).

⁷ *Ie* under *ibid* r 55A(1).

⁸ *Ibid* r 55B(6) (as added: see NOTE 2).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(iii) Disciplinary Offences and Punishments/602. Suspended punishments.

602. Suspended punishments.

Subject to any directions of the Secretary of State¹, the power to impose a disciplinary punishment² (other than a caution) includes power to direct that the punishment is not to take effect unless, during a period specified in the direction (not being more than six months from the date of the direction), the prisoner commits another offence against discipline and a further direction³ is given⁴. Where a prisoner commits an offence against discipline during the specified period, the person dealing with that offence may:

- 115 (1) direct that the suspended punishment is to take effect⁵;
- 116 (2) reduce the period or amount of the suspended punishment and direct that it is to take effect as so reduced⁶;
- 117 (3) vary the original direction by substituting for the period specified a period expiring not later than six months from the date of variation⁷; or
- 118 (4) give no direction with respect to the suspended punishment⁸.

1 As to the Secretary of State see PARA 505 ante.

2 As to disciplinary awards see PARA 601 ante.

3 Ie under the Prison Rules 1999, SI 1999/728, r 60(2) (see the text and notes 5-8 infra): see r 60(1).

4 Ibid r 60(1).

5 Ibid r 60(2)(a).

6 Ibid r 60(2)(b).

7 Ibid r 60(2)(c).

8 Ibid r 60(2)(d).

UPDATE

602 Suspended punishments

TEXT AND NOTES 1-4--Where an award of additional days has been suspended under SI 1999/728 r 60(1) and a prisoner is charged with committing an offence against discipline during the period specified in a direction given, the governor must either inquire into the charge and give no direction with respect to the suspended award or refer the charge to the adjudicator for him to inquire into it: r 60(3) (added by SI 2002/2116).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(iii) Disciplinary Offences and Punishments/603. Remission and mitigation of punishments and quashing of findings of guilt.

603. Remission and mitigation of punishments and quashing of findings of guilt.

The Secretary of State¹ may quash any finding of guilt and may remit² any punishment or mitigate it either by reducing it or by substituting another award which is, in his opinion, less severe³. Subject to any directions given by the Secretary of State, the governor may remit or mitigate any punishment imposed by a governor or the board of visitors⁴.

1 As to the Secretary of State see PARA 505 ante. An application to quash a finding of guilt will be considered by an area manager who will review the record of hearing and consider whether the proceedings were conducted according to the legal requirements of fairness: Prison Service Discipline Manual para 9.6. Area managers can also consider the merits of a decision: Prison Service Discipline Manual para 9.6.

2 Where additional days have been imposed adult prisoners may apply within six months (four months for young offenders) of the disciplinary decision to have this period remitted, providing that in that period the prisoner has not had a suspended award activated or been given a further punishment of additional days for a subsequent offence: Prison Service Discipline Manual para 8. An application to remit additional days is not an appeal against the decision or the severity of the punishment. The application is made to the governor, who is required to consider whether remitting is appropriate to reward prisoners who take a constructive approach towards imprisonment or to acknowledge a genuine change of attitude on the prisoner's behalf; this must, however, be balanced against the need to preserve the deterrent effect of the original punishment: see the Prison Service Discipline Manual para 8.

3 Prison Rules 1999, SI 1999/728, r 61(1).

4 Ibid r 61(2).

UPDATE

603 Remission and mitigation of punishments and quashing of findings of guilt

TEXT AND NOTES 1-3--SI 1999/728 r 61(1) does not apply in the case of a finding of guilt made, or a punishment imposed, by an adjudicator under r 55A(1) (as added) (see PARA 601A): r 61(1) (amended by SI 2005/869).

TEXT AND NOTE 4--Replaced. Subject to any directions given by the Secretary of State, the governor may, on the grounds of good behaviour, remit or mitigate any punishment already imposed by an adjudicator, governor: SI 1999/728 r 61(2) (substituted by SI 2005/869; and amended by SI 2008/597).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(iv) Offences by, and Control of, Non-prisoners/604. Prohibited articles.

(iv) Offences by, and Control of, Non-prisoners

604. Prohibited articles.

It is an offence, punishable by imprisonment for a term not exceeding ten years, for any person to assist a prisoner to escape or to attempt to escape from a prison¹.

It is a summary offence, punishable by imprisonment for a term not exceeding six months or a fine not exceeding level 3 on the standard scale² or both, for any person, contrary to the regulations of a prison, to bring or attempt to bring into the prison or to a prisoner any spirituous or fermented liquor or tobacco, or to place any such liquor or any tobacco anywhere outside the prison intending that it should come into a prisoner's possession³.

Any person who, contrary to the regulations of a prison, conveys or attempts to convey any letter or any other thing into or out of a prison or to a prisoner or places it anywhere outside the prison with intent that it should come into the possession of a prisoner, if he is not guilty of an offence under the provisions previously mentioned, is liable on summary conviction to a fine not exceeding level 3 on the standard scale⁴.

A notice of these penalties must be conspicuously placed outside every prison⁵.

No person may, without authority, convey into or throw into or deposit in a prison, or convey or throw out of a prison, or convey to a prisoner, or deposit in any place with intent that it should come into a prisoner's possession, any money, clothing, food, drink, tobacco, letter, paper, book, tool, controlled drug⁶, firearm, explosive, weapon or any other article, and any article so dealt with may be confiscated by the governor⁷.

In a prosecution under these provisions, the specific regulations of the prison which have allegedly been contravened should be particularised in the charge⁸. If the regulation is that concerning the conveying of prohibited articles into prison, a Queen's Printer's copy should be produced in court; if the regulation is specific to the particular prison, a witness should be called to prove its existence⁹. The court must consider the purpose for and the circumstances in which the accused took the article into the prison; and if it is found that it was for the accused's personal use, it must be determined whether this was with the express or implied authority of the prison authorities¹⁰.

1 See the Prison Act 1952 s 39 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 744-745.

2 As to the standard scale see PARA 517 note 4 ante.

3 See the Prison Act 1952 s 40 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). It is necessary to prove the specific intention that the liquor or tobacco should come into a prisoner's possession only when it is placed outside the prison: *R v Ashley* (1967) 52 Cr App Rep 42, CA. As to the liability of prison officers under this provision see PARA 517 ante.

4 See the Prison Act 1952 s 41 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46).

5 See the Prison Act 1952 s 42.

6 For the meaning of 'controlled drug' see PARA 596 note 3 ante.

7 See the Prison Rules 1999, SI 1999/728, r 70.

8 *R v Ashley* (1967) 52 Cr App Rep 42 at 44-45, CA, per Edmund Davies LJ.

9 *R v Ashley* (1967) 52 Cr App Rep 42 at 45, CA, per Edmund Davies LJ.

10 *R v Ashley* (1967) 52 Cr App Rep 42 at 46, CA, per Edmund Davies LJ.

UPDATE

604 Prohibited articles

NOTE 1--1952 Act s 39 substituted: Offender Management Act 2007 s 21.

NOTE 3--1952 Act s 40 now ss 40A-40C (substituted by Offender Management Act 2007 s 22(1)). The 1952 Act s 40A defines three categories of prohibited items referred to in s 40B, which makes it an offence to convey List A articles into or out of prison without authorisation, and s 40C, which makes it an offence to convey List B or C articles into or out of prison. List A comprises dangerous articles and controlled drugs; List B comprises alcohol, mobile telephones, cameras and sound-recording devices; and List C comprises articles or substances that have been prescribed as such by the prison rules. See SI 1999/728 r 70A (List C articles) (added by SI 2008/597).

See also 1952 Act ss 40D, 40E (added by 2007 Act s 23) which create new offences of taking a photograph or making sound recordings within a prison, transmitting images or sounds from inside a prison without authorisation and taking a restricted document out of a prison. See also 1952 Act s 40F (added by 2007 Act s 24) (offences under 1952 Act ss 40B-40D: extension of Crown immunity). For transitional and transitory provisions and savings see 2007 Act Sch 4 Pt 2.

NOTE 4--1952 Act s 41 repealed: 2007 Act s 23(2), Sch 5 Pt 2.

NOTE 5--1952 Act s 42 amended: 2007 Act s 23(3).

TEXT AND NOTES 6, 7--Words 'money ... other' omitted: SI 1999/728 r 70 (amended by SI 2008/597).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(6) MAINTENANCE OF DISCIPLINE AND ORDER/(iv) Offences by, and Control of, Non-prisoners/605. Entry, search and removal.

605. Entry, search and removal.

No outside person may view a prison unless authorised by statute or the Secretary of State¹. No person viewing a prison may take a photograph, make a sketch or communicate with a prisoner unless authorised by statute or the Secretary of State².

Any person or vehicle entering or leaving a prison may be stopped, examined and searched³. The governor may direct the removal from a prison of any person who does not leave on being required to do so⁴.

The Secretary of State may, with a view to securing discipline and good order or the prevention of crime or in the interests of any persons, impose prohibitions on visits by a person to a prison or to a prisoner in a prison for such periods of time as he considers necessary⁵. Such a prohibition does not apply in relation to any visit to a prison or prisoners by a member of the Board of Visitors⁶ of the prison or a justice of the peace, or to prevent any visit by a legal adviser⁷ or an additional visit allowed in special circumstances⁸.

1 Prison Rules 1999, SI 1999/728, r 72(1). As to the Secretary of State see PARA 505 ante.

2 Ibid r 72(2).

3 See ibid r 71(1); and PARA 571 ante.

4 See ibid r 71(2); and PARA 571 ante.

5 See ibid r 73(1); and PARA 571 ante.

6 As to Boards of Visitors see PARAS 511-513 ante.

7 As to visits by legal advisers see the Prison Rules 1999, SI 1999/728, r 38; and PARAS 606-607 post.

8 See ibid r 73(2); and PARA 571 ante. As to additional visits in special circumstances see r 35(6); and PARAS 569, 571 ante.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(7) LEGAL ADVICE AND ASSISTANCE; LITIGATION/606. Access to legal advice generally.

(7) LEGAL ADVICE AND ASSISTANCE; LITIGATION

606. Access to legal advice generally.

Subject to directions given by the Secretary of State¹, the legal adviser² of a prisoner may interview the prisoner in connection with any legal business other than litigation to which the prisoner is a party, out of the hearing but in the sight of an officer³.

A prisoner may correspond with his legal adviser and any court⁴. Such correspondence may be opened if the governor has reasonable cause to believe that it contains an illicit enclosure⁵, and may be opened, read and stopped if the governor has reasonable cause to believe its contents endanger prison security or the safety of others or are otherwise of a criminal nature⁶. A prisoner must be given the opportunity to be present when any such correspondence is opened and must be informed if it or any enclosure is to be read or stopped⁷. On request a prisoner must be provided with any writing materials necessary for him to correspond with his legal adviser or the court⁸.

In each prison selected officers, known as 'designated officers for legal aid and appeals', are responsible for interviewing prisoners on their arrival in prison, for dealing with inquiries about how to obtain legal advice and with processing application forms for legal aid⁹. Their function is to identify all inmates who are eligible to apply for legal aid or to appeal or to apply for leave to appeal to the Court of Appeal¹⁰, and to see that they do not fail to do so through ignorance or any other inadequacy, although they do not give legal advice or assistance as such¹¹.

1 As to the Secretary of State see PARA 505 ante.

2 'Legal adviser' means, in relation to a prisoner, his counsel or solicitor, and includes a clerk acting on behalf of his solicitor: Prison Rules 1999, SI 1999/728, r 2(1). Prisoners may receive visits from a legal adviser where they wish to consult about (1) possible legal proceedings; (2) other legal business, eg selling a house or making a will; (3) a forthcoming adjudication; and (4) an application to the European Court of Human Rights: see the Prison Service Standing Order 5A.

3 Prison Rules 1999, SI 1999/728, r 38(2). The right of a prisoner to receive a visit from his legal adviser is subject to the overriding power conferred by r 34(1) (see PARA 569 ante) to impose restrictions either generally or in the particular case on the communications to be permitted between a prisoner and other persons: see eg *R v Greater Manchester Police, ex p Burton* (13 August 1998, unreported), DC (application for leave to move for judicial review refused in the case of a solicitor's clerk who had been refused access to visits clients in a number of prisons on the ground that he was not legally qualified, had a criminal record and was at the time awaiting trial for serious charges, including perverting the course of justice). As to the right to receive visits from a legal adviser in connection with litigation see the Prison Rules 1999, SI 1999/728, r 38(1); and PARA 607 text and note 4 post.

4 Prison Rules 1999, SI 1999/728, r 39(1). For these purposes, 'court' includes the European Commission of Human Rights, the European Court of Human Rights and the European Court of Justice: r 39(6). As to correspondence generally see PARA 570 ante.

Correspondence covered by r 39 should be marked 'Prison Rule 39' and if outgoing may be handed in sealed by the inmate: see the Prison Service Standing Order 5B.

No distinction is drawn between the privilege attaching to correspondence relating to ongoing litigation and other legal correspondence following the decision in *Campbell and Fell v United Kingdom* (1984) 7 EHRR 165, ECtHR.

As to the limits of the power to interfere with prisoners' rights of access to the courts and to privileged communication with legal advisers see also *Raymond v Honey* [1983] 1 AC 1, [1982] 1 All ER 756, HL; *R v*

Secretary of State for the Home Department, ex p Anderson [1984] QB 778, [1984] 1 All ER 920, DC; Application 5947/72 *Silver v United Kingdom* (1980) 3 EHRR 475, EComHR.

5 See the Prison Rules 1999, SI 1999/728, r 39(1), (2). 'Illicit enclosure' includes any article, possession of which has not been authorised in accordance with the other provisions of the Prison Rules 1999, SI 1999/728, and any correspondence to or from a person other than the prisoner concerned, his legal adviser or a court: r 39(6).

6 See *ibid* r 39(1), (3). See *Willis v Governor of HMP Winchester (sued as Pascoe)* (21 December 1994, unreported), ChD (court made a declaration protecting a remand prisoner's right of confidentiality and preventing disclosure to prosecuting authorities of legal correspondence written by him that had been inadvertently opened by prison staff).

7 Prison Rules 1999, SI 1999/728, r 39(4). It seems that r 39 does not extend to legal correspondence once it has come into a prisoner's possession, even though that correspondence remains subject to legal professional privilege. Thus where a random cell search is conducted, it is not *ultra vires* to open (but not read) a prisoner's legal correspondence without his being present: *R v Governor of Whitemoor Prison, ex p Main* [1999] QB 349, [1998] 2 All ER 491, CA.

8 Prison Rules 1999, SI 1999/728, r 39(5).

9 Unconvicted prisoners, civil prisoners, newly sentenced prisoners or other prisoners entering prison custody for the first time must have the availability of legal aid drawn to their attention: Standing Order 1A 51(d).

10 As to appeals to the Court of Appeal see PARA 610 post.

11 In general, interviews between a prisoner and legal aid officer should be confidential where they concern legal aid applications. See, however, *R v Umoh* (1986) 84 Cr App Rep 138, [1987] Crim LR 258, CA, where a conversation in which the prisoner made disclosures regarding drugs, but barely mentioned application for legal aid, was held not to be confidential.

UPDATE

606 Access to legal advice generally

TEXT AND NOTES 1-3--SI 1999/728 r 38(1), (2) amended: SI 2009/3082.

NOTE 2--The term 'legal adviser' includes any lawyer chosen by the prisoner who is entitled to represent him in criminal proceedings: *R (on the application of van Hoogstraten) v Governor of Belmarsh Prison* [2003] 1 WLR 263 (Italian lawyer exercising freedom to provide services under European Community rules was 'legal adviser').

TEXT AND NOTES 4-7--SI 1999/728 r 39(1) substituted, s 39(2)-(4), (6) amended: SI 2009/3082.

NOTE 4--See *R (on the application of Cannan) v Secretary of State* [2003] All ER (D) 142 (Jan).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(7) LEGAL ADVICE AND ASSISTANCE; LITIGATION/607. Facilities in connection with litigation.

607. Facilities in connection with litigation.

Prisoners are subject to no legal disability as regards taking or defending legal proceedings¹. Indeed, prisoners have a right to unimpeded access to a court and nothing in the Prison Act 1952 confers power to make rules which would deny or interfere with that right². A prisoner is therefore entitled to make direct contact with a court and his legal advisers with the object of initiating civil or criminal proceedings and any interference, being an act calculated to obstruct the due course of justice, constitutes a contempt of court³.

The legal adviser of a prisoner in any legal proceedings, civil or criminal, to which the prisoner is a party must be afforded reasonable facilities for interviewing him in connection with those proceedings and may do so out of the hearing but in the sight of an officer⁴.

Subject to any directions given in the particular case by the Secretary of State⁵, a registered medical practitioner selected by or on behalf of a prisoner who is a party to any legal proceedings must be afforded reasonable facilities for examining the prisoner in connection with the proceedings and may do so out of hearing but in the sight of an officer⁶.

¹ Such disabilities as remained were removed by the Criminal Justice Act 1948 s 83(3), Sch 10 Pt I, repealing the Forfeiture Act 1870 s 8.

² *Raymond v Honey* [1983] 1 AC 1, [1982] 1 All ER 756, HL. The right to unimpeded access to the court includes the right of access to legal advice: *R v Secretary of State for the Home Department, ex p Anderson* [1984] QB 778, [1984] 1 All ER 920, DC.

³ *Raymond v Honey* [1983] 1 AC 1, [1982] 1 All ER 756, HL. If a prisoner writes to the Master of the Crown Office setting out any grounds for the issue of a writ of habeas corpus, the letter will be considered by the Divisional Court: *Re Wring* [1960] 1 All ER 536n, [1960] 1 WLR 138, DC.

⁴ Prison Rules 1999, SI 1999/728, r 38(1). As to contact with legal advisers through correspondence see PARA 606 ante. No distinction is drawn between correspondence relating to existing litigation and other legal business, and the power of the governor to open such correspondence is strictly circumscribed: see PARA 606 ante.

⁵ As to the Secretary of State see PARA 505 ante.

⁶ Prison Rules 1999, SI 1999/728, r 20(6). As to medical care generally see PARA 580 et seq ante.

UPDATE

607 Facilities in connection with litigation

TEXT AND NOTE 4--SI 1999/728 r 38(1) amended: SI 2009/3082.

TEXT AND NOTE 6--SI 1999/728 r 20 substituted: SI 2009/3082.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(7) LEGAL ADVICE AND ASSISTANCE; LITIGATION/608. Transfer for the purpose of attending trial.

608. Transfer for the purpose of attending trial.

The Secretary of State¹ may make an order for the transfer of a prisoner to a prison in another part of the United Kingdom² or in any of the Channel Islands for the purpose of attending criminal proceedings against him there³.

- 1 As to the Secretary of State see PARA 505 ante.
- 2 For the meaning of 'United Kingdom' see PARA 504 note 1 ante.
- 3 See the Crime (Sentences) Act 1997 s 41, Sch 1 para 2; and PARA 549 ante.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(7) LEGAL ADVICE AND ASSISTANCE; LITIGATION/609. Production and presence in court.

609. Production and presence in court.

A prisoner is not entitled as of right to be present in court to argue his case¹. However, the Secretary of State² may order the transfer of a prisoner for the purpose of attending criminal proceedings against him³, and may direct that a prisoner should be taken to any place if his attendance is desirable in the interests of justice⁴ or for the purposes of any public inquiry⁵. In addition, a prisoner's attendance can be compelled by judicial process. A judge of the High Court may, by warrant or order, compel the attendance of a prisoner, except a civil prisoner, before any court to be examined as a witness in any civil or criminal proceedings⁶; and a similar power, again excluding civil prisoners, exists with regard to proceedings before a county court⁷. A judge of the High Court may also effect a prisoner's production by habeas corpus; a writ of habeas corpus ad testificandum will be issued to bring up a prisoner to give evidence⁸. Statute specifically empowers the judge to grant the writ in respect of trials, civil or criminal, in the High Court or any other court of record⁹. Where the prisoner is required to stand trial, his presence may be compelled by a writ of habeas corpus ad respondendum¹⁰ at common law, except in respect of courts martial and proceedings before various commissioners, where the power is statutory¹¹.

Applications for production of a prisoner both by writ of habeas corpus and otherwise must be made on witness statement or affidavit to a judge sitting in private¹². Under all these powers, production of the prisoner is subject to the expenses of production being covered¹³. Indeed, in the case of the county court, it is expressly provided that the person having custody of the prisoner is not bound to obey the order for production unless there is tendered to him a reasonable sum for the conveyance and maintenance of the prisoner and his escorting officers¹⁴. A prisoner required to be taken in custody to any court must not wear prison uniform¹⁵.

1 *Weldon v Neal* (1885) 15 QBD 471, DC; *Benns v Mosley and Cobbett* (1857) 2 CBNS 116; *Ford v Graham* (1850) LM & P 604, 10 CB 369; *Becker v Home Office* [1972] 2 QB 407 at 416, [1972] 2 All ER 676 at 680, CA, per Lord Denning MR.

2 As to the Secretary of State see PARA 505 ante.

3 See the Crime (Sentences) Act 1997 s 41, Sch 1 para 2; and PARA 549 ante.

4 'In the interests of justice' is not defined, but it would appear to be wide enough to include not only courts and statutory tribunals, but all bodies required to act judicially. Where the prisoner is a party to proceedings and applies to the Secretary of State to be produced at court it is reasonable for a governor to require the prisoner to pay the costs of production (*Becker v Home Office* [1972] 2 QB 407, [1972] 2 All ER 676, CA; *R v Secretary of State for the Home Department, ex p Greenwood* (1986) Times, 2 August), though it may be unlawful if the amount sought is greater than he can afford or greater than the cost of production from the prison most proximate to the court (*Wynne v Secretary of State for the Home Department* [1992] QB 406 at 423-424, [1992] 2 All ER 301 at 311-312, CA, per Lord Donaldson MR; affd on other grounds [1993] 1 All ER 574, [1993] 1 WLR 115, HL). It is likely that non-production because the prisoner is unable to pay for production in a case where the interests of justice require it, would be a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 6 (see PARA 504 ante).

See also *R v Governor of Brixton Prison, ex p Walsh* [1985] AC 154, sub nom *Walsh v Governor of Brixton Prison* [1984] 2 All ER 609, HL. In this case the governor, whose refusal was based on a lack of staff resources, was held not to be under a duty to produce the defendant, who had been remanded in custody, to the court to which he had been remanded on bail in relation to other charges. It was significant that the prisoner was not being prevented from attending the trial itself.

5 See the Crime (Sentences) Act 1997 Sch 1 para 3(1); and PARA 550 ante.

6 See the Criminal Procedure Act 1853 s 9 (amended by the Statute Law Revision Act 1892; and the Prison Act 1898 s 15(1), Schedule). See also ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 250.

7 See the County Courts Act 1984 s 57(1). See also COURTS; ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 250.

8 As to the writ of habeas corpus ad testificandum see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 250.

9 See the Habeas Corpus Act 1804 s 1 (amended by the Courts Act 1971 s 56(4), Sch 11 Pt IV). See also ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 250. As to proceedings before an arbitrator see the Arbitration Act 1996 s 43; and ARBITRATION vol 2 (2008) PARA 1253.

10 As to the writ of habeas corpus ad respondendum see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 250.

11 See the Habeas Corpus Act 1803 s 1 (amended by the Statute Law Revision Act 1948); and *Re St John Dunmow Galwey* (1868) 19 LT 262. See also ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 250.

12 See CPR Sch 1 RSC Ord 54(9). As from 26 April 1999, the Civil Procedure Rules (CPR) replace the Rules of the Supreme Court and the County Court Rules. Certain provisions of the RSC and CCR are saved in a modified form in CPR Schs 1 and 2 respectively. The CPR apply to proceedings issued on or after 26 April 1999, and new steps taken in existing proceedings, as prescribed: CPR 51; *Practice Direction--Transitional Arrangements* (1999) PD 51. See further CIVIL PROCEDURE.

13 *Anon* (1663) 1 Keb 566; *Dodd's Case* (1858) 2 De G & J 510 at 532-533 per Lord Chelmsford LC; *Becker v Home Office* [1972] 2 QB 407 at 415, [1972] 2 All ER 676 at 680, CA, per Lord Denning MR. Cf note 4 *supra*.

14 See the County Courts Act 1984 s 57(4).

15 See the Prison Rules 1999, SI 1999/728, r 40(3); and PARA 575 *ante*.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(7) LEGAL ADVICE AND ASSISTANCE; LITIGATION/610. Production and presence in Court of Appeal.

610. Production and presence in Court of Appeal.

A prisoner who is an appellant, as opposed to being an applicant, before the Criminal Division of the Court of Appeal is entitled to be present at the hearing of his appeal if he so wishes¹, except when his appeal involves a question of law alone, in which case he is not entitled to be present unless the Court of Appeal gives him leave². Neither is the prisoner entitled to be present, except with leave of the Court of Appeal:

- 119 (1) on an application by him for leave to appeal against conviction or sentence or both³;
- 120 (2) on any proceedings preliminary or incidental to an appeal⁴; or
- 121 (3) where he is in custody in consequence of a verdict of not guilty by reason of insanity⁵ or of a finding that he is under a disability⁶.

The power of the Court of Appeal to pass sentence⁷ on an applicant may be exercised even though he is for any reason not present⁸. The Court of Appeal may admit a prisoner in any appeal before the Court of Appeal to bail pending the determination of his appeal⁹, but it will do so only in exceptional circumstances¹⁰.

1 See the Criminal Appeal Act 1968 s 22(1); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1874.

2 See *ibid* s 22(2)(a); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1874.

3 See *ibid* s 22(2)(b); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1874.

4 See *ibid* s 22(2)(c); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1874.

5 See *ibid* s 12 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARAS 1838, 1887 *et seq*.

6 See *ibid* s 22(2)(d); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1874.

7 *Ie* under *ibid* s 11(3)(b): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 49.

8 See *ibid* s 22(3); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1874. The practice of the Court of Appeal on granting leave to appeal preparatory to passing a lesser sentence or to quash a sentence is, in the absence of the applicant, to seek the consent of the prisoner's counsel to the exercise of the power to pass sentence.

9 See *ibid* s 19 (as substituted and amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1193 *et seq*.

10 *R v Watton* (1978) 68 Cr App Rep 293, CA.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(7) LEGAL ADVICE AND ASSISTANCE; LITIGATION/611. Service on prisoners.

611. Service on prisoners.

Service of documents upon a defendant prisoner is effected in the usual manner after application to the governor¹. Where personal service is not essential, documents may be delivered to the prison for the prisoner².

¹ It is a contempt for the governor to obstruct service: *Danson v Le Capelain and Steele* (1852) 7 Exch 667. As to the service of documents see CPR Pt 6. As to the CPR see PARA 609 note 12 ante; and CIVIL PROCEDURE.

² *Whitehead v Barber* (1720) 1 Stra 248; *Newenham v Pemberton* (1845) 2 Coll 54.

UPDATE

611 Service on prisoners

NOTE 1--CPR Pt 6 substituted by SI 2008/2178.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/(i) Release/612. Temporary release.

(8) RELEASE, DISCHARGE AND DEATH

(i) Release

612. Temporary release.

The Secretary of State¹ may release temporarily certain prisoners who have been convicted and sentenced². Such a prisoner may be released for any period or periods and subject to any conditions³, but only for the following purposes:

- 122 (1) on compassionate grounds or for the purpose of receiving medical treatment⁴;
- 123 (2) to engage in employment or voluntary work⁵;
- 124 (3) to receive instructions or training which cannot reasonably be provided in the prison⁶;
- 125 (4) to enable him to participate in any proceedings before any court, tribunal or inquiry⁷;
- 126 (5) to enable him to consult with his legal adviser in circumstances where it is not reasonably practicable for the consultation to take place in the prison⁸;
- 127 (6) to assist any police officer in any enquiries⁹;
- 128 (7) to facilitate the prisoner's transfer between prisons¹⁰;
- 129 (8) to assist him in maintaining family ties or in his transition from prison life to freedom¹¹; or
- 130 (9) to enable him, as a privilege¹², to make a visit in the locality of the prison¹³.

A prisoner may not be temporarily released under these provisions unless the Secretary of State is satisfied that there would not be an unacceptable risk of his committing offences whilst released or otherwise failing to comply with any condition upon which he is released¹⁴. Furthermore, the Secretary of State must not release a prisoner under these provisions if, having regard to:

- 131 (a) the period or proportion of his sentence which the prisoner has served¹⁵; and
- 132 (b) the frequency with which the prisoner has been granted temporary release¹⁶,

the Secretary of State is of the opinion that the release of the prisoner would be likely to undermine public confidence in the administration of justice¹⁷.

If a prisoner has been temporarily released under these provisions during the relevant period¹⁸ and has been sentenced to imprisonment for a criminal offence committed whilst at large following that release, he must not be released under these provisions unless his release, having regard to the circumstances of his conviction, would not, in the opinion of the Secretary of State, be likely to undermine public confidence in the administration of justice¹⁹.

A prisoner who is temporarily released under these provisions may be recalled to prison at any time whether the conditions of his release have been broken or not²⁰.

¹ As to the Secretary of State see PARA 505 ante.

2 See the Prison Act 1952 s 47(5) (as amended) (see PARA 502 ante); and the Prison Rules 1999, SI 1999/728, r 9(1). Rule 9 applies to prisoners other than persons committed in custody for trial or to be sentenced or otherwise dealt with before or by any Crown Court or remanded in custody by any court: see r 9(9).

Category A prisoners, prisoners on the escape list, unconvicted and unsentenced prisoners and prisoners subject to extradition proceedings are ineligible for temporary release: Instruction to Governors 36/1995 para 2.3. Life sentence prisoners, provided that they are not excluded by reference to the above criteria, are eligible for all types of temporary release only after they have received a provisional release date or have moved to open conditions: Instruction to Governors 36/1995 para 6.1. Administrative guidance on the exercise of discretion to permit a prisoner to be temporarily released is contained in the Instruction to Governors 36/1995. A prisoner may not assert a substantive legitimate expectation that any particular scheme for administering the grant of temporary release will remain in force, only that he will be treated fairly in accordance with the published criteria: *R v Secretary of State for the Home Department, ex p Hargreaves* [1997] 1 All ER 397, [1997] 1 WLR 906, CA. See also *R v Secretary of State for the Home Department, ex p Briggs* (1995) Independent, 26 September, DC. Prisoners who are granted temporary release in accordance with the Prison Rules 1999, SI 1999/728, r 9 will be granted a compassionate licence (see note 4 infra), a facility licence (see notes 5-8 infra) or a resettlement licence (see note 11 infra): see the Instruction to Governors 36/1995. While decisions on temporary release are for the Secretary of State, they are normally delegated to the governor of the prison where the prisoner is held, although Prison Service Headquarters will be involved in decisions concerning life sentence prisoners: Instruction to Governors 36/1995 paras 1.3, 6.1.

3 Prison Rules 1999, SI 1999/728, r 9(2).

4 Ibid r 9(3)(a). A compassionate temporary release licence will be granted where the prisoner has exceptional personal reasons falling within one of four categories: (1) visits to dying close relatives, funerals or other tragic personal circumstances; (2) primary carers who have responsibility for children or elderly relatives on release; (3) release for marriage or other religious ceremonies; (4) for medical appointments: Instruction to Governors 36/1995 para 3.1. 'Close relatives' is normally limited to spouses (including partners lived with immediately before reception into prison), parents and children, but it may be appropriate in the light of different family relationships that exist within some communities to extend it further than this: see the Instruction to Governors 36/1995 para 3.5.

5 Prison Rules 1999, SI 1999/728, r 9(3)(b). A prisoner released for this purpose will be granted a facility licence which will normally be granted for no more than five consecutive days or on a day release basis: Instruction to Governors 36/1995 para 4.8. Governors are directed that they should consider whether the activity is constructive and whether it can only be achieved outside prison and also that they should not authorise release where it would attract reasonable public concern, particularly in relation to the nature of the offence or the nature of the activity: see PARA 4.2. In addition to the generally ineligible groups, category B prisoners may not apply for a facility licence: see PARAS 2.3, 4.5. Determinate sentence prisoners are only eligible to apply after they have served at least a quarter of their sentence: para 4.6.

6 Prison Rules 1999, SI 1999/728, r 9(3)(c). Release will be covered by a facility licence: see note 5 supra.

7 Ibid r 9(3)(d). Release will be covered by a facility licence: see note 5 supra.

8 Ibid r 9(3)(e). Release will be covered by a facility licence: see note 5 supra.

9 Ibid r 9(3)(f).

10 Ibid r 9(3)(g).

11 Ibid r 9(3)(h). A prisoner released for these purposes will be granted a resettlement licence, which is generally regarded as appropriate as a prisoner approaches the end of his sentence. The frequency and duration of resettlement licences should be determined by the purpose and need for the release; and the duration of each release should be for between one and five days, with at least eight-week intervals between each licence: Instruction to Governors 36/1995 para 5.11. In the case of prisoners sentenced to life imprisonment, it is recommended that the licence should only be granted during the working week, when the supervising probation officer will be available, at least for the first few grants of leave: see PARA 6.8.

12 Ie under the Prison Rules 1999, SI 1999/728, r 8 (see PARA 568 ante): see r 9(3)(i).

13 Ibid r 9(3)(i).

14 Ibid r 9(4).

15 Ibid r 9(5)(a). For the purposes of any reference in r 9 to a prisoner's sentence, consecutive terms and terms which are wholly or partly concurrent are to be treated as a single term if they would fall to be treated as a single term for the purposes of any reference to the term of imprisonment to which a person has been sentenced in the Criminal Justice Act 1991 Pt II (ss 32-51) (as amended): Prison Rules 1999, SI 1999/728, r

9(10). Where r 9(10) does not apply to require all the sentences the prisoner is serving to be treated as a single term, then for the purposes of r 9(5)(a) the Secretary of State must have regard to the period or portion of any such sentence he has served: r 9(5)(a). For these purposes, any reference to a sentence of imprisonment is to be construed as including any sentence to detention or custody: r 9(11)(a).

16 Prison Rules 1999, SI 1999/728, r 9(5)(b).

17 See *ibid* r 9(5).

18 The 'relevant period' is (1) in the case of a prisoner serving a determinate sentence of imprisonment, the period he has served in respect of that sentence, unless, notwithstanding *ibid* r 9(10) (see note 15 *supra*), the sentences he is serving do not fall to be treated as single term, in which case it is the period since he was last released in relation to one of those sentences under the Criminal Justice Act 1991 Pt II (ss 32-51) (as amended); (2) in the case of a prisoner serving an indeterminate sentence of imprisonment, if the prisoner has been previously released on licence under the Crime (Sentences) Act 1997 Pt II (ss 8-34) or the Criminal Justice Act 1991 Pt II (ss 32-51) (as amended), the period since the date of his last recall to prison in respect of that sentence or, where the prisoner has not been so released, the period he has served in respect of that sentence; or (3) in the case of a prisoner detained in prison for any other reason, the period for which the prisoner has been detained for that reason: Prison Rules 1999, SI 1999/728, r 7(a), (b), (c). However, where a prisoner falls within two or more of heads (1)-(3) *supra*, the 'relevant period', in the case of that prisoner, is determined by whichever of the applicable heads produces the longer period: see r 9(7). Any reference to release on licence or otherwise under the Criminal Justice Act 1991 Pt II (ss 32-51) (as amended) includes any release on licence under any legislation providing for early release on licence: Prison Rules 1999, SI 1999/728, r 9(11)(b).

19 *Ibid* r 9(6).

20 *Ibid* r 9(8). It is an offence to remain unlawfully at large after temporary release: see the Prisoners (Return to Custody) Act 1995 s 1; and PARA 540 *ante*.

UPDATE

612-622 Release

For provision relating to polygraph conditions for certain offenders released on licence see PARA 622A.

612 Temporary release

NOTE 2--The decision as to whether a prisoner's application for release on temporary licence is to be granted is one solely for the Secretary of State or the prison governor acting on his behalf: *Lexi Holdings plc v Luqman* [2008] All ER (D) 22 (Jan) (guidance, purporting to require permission of sentencing judge before granting temporary release on licence of prisoner committed for contempt of court, unlawful).

NOTE 5--A prisoner who fails to return to prison at the expiry of his temporary release period cannot be said to have escaped from custody, and cannot, therefore, be guilty of the common law offence of escape from custody: *R v Montgomery* [2007] EWCA Crim 2157, [2008] 2 All ER 924.

TEXT AND NOTES 12, 13--Head (9) omitted: SI 2005/3437.

NOTES 15, 18--1991 Act Pt II repealed: Criminal Justice Act 2003 s 303(a), Sch 37 Pt 7. 1997 Act ss 6, 10-27 repealed: Crime and Disorder Act 1998 s 107(2), Sch 10. 1997 Act ss 9, 9A, consolidated in Powers of Criminal Courts (Sentencing) Act 2000 ss 87, 88, repealed: 2003 Act s 303(d)(iii), Sch 37 Pt 7.

NOTES 15-17--See *R (on the application of Adelana) v Governor of HMP Downview* [2008] EWHC 2612 (Admin), [2008] All ER (D) 275 (Oct).

NOTE 15--For the purposes of any reference in this provision to an inmate's sentence, consecutive terms and terms which are wholly or partly concurrent must be treated as a single term: SI 1999/728 r 9(10) (substituted by SI 2005/3437).

NOTE 18--SI 1999/728 r 9(7) amended: SI 2005/3437.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/(i) Release/613. Release to relieve overcrowding.

613. Release to relieve overcrowding.

The Secretary of State¹ may order that persons of any class specified in the order who are serving a sentence of imprisonment, other than:

- 133 (1) imprisonment for life²; or
- 134 (2) imprisonment to which they were sentenced (a) for an excluded offence³; (b) for attempting to commit such an offence; (c) for conspiracy to commit such an offence; or (d) for aiding or abetting, counselling, procuring or inciting the commission of such an offence⁴,

are to be released from prison at such time earlier (but not more than six months earlier) than they would otherwise be so released as may be fixed by the order; but the Secretary of State must not make such an order unless he is satisfied that it is necessary to do so in order to make the best use of the places available for detention⁵. No person may be so released if he is subject to more than one sentence of imprisonment⁶ and at least one of the terms that he has to serve is for an offence mentioned in head (2) above⁷.

Such an order:

- 135 (i) may define a class of persons in any way⁸;
- 136 (ii) may relate to one or more specified prisons, or to prisons of a specified class (however defined), or to prisons generally⁹; and
- 137 (iii) may make the time at which a person of any specified class is to be released depend on any circumstances whatever¹⁰.

Where a person who is to be released from prison in pursuance of such an order is a person serving a sentence of imprisonment in respect of whom an extended sentence certificate¹¹ was issued when the sentence was passed, his release must be a release on licence¹², irrespective of whether at the time of his release he could have been released on licence¹³. Where a person not within this provision is released from prison in pursuance of such an order, his sentence expires on his release¹⁴.

An order under these provisions must be made by statutory instrument¹⁵. No such order must be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament¹⁶, or the expedited procedure conditions are satisfied¹⁷. The expedited procedure conditions are satisfied if the order does not provide for the release of any persons before one month earlier than they would otherwise be released¹⁸; and it is declared in the order that it appears to the Secretary of State that by reason of urgency it is necessary to make the order without a draft having been so approved¹⁹. Every such order (except such an order of which a draft has been so approved) must be laid before Parliament²⁰; and ceases to have effect at the expiry of a period of 40 days²¹ beginning with the date on which it was made unless, before the expiry of that period, the order has been approved by resolution of each House of Parliament, but without prejudice to anything previously done or to the making of a new order²². Such an order does not remain in force after the expiration of six months beginning with the date on which it is made, but this is without prejudice to the power of the Secretary of State to revoke the order or to make a further such order²³.

1 As to the Secretary of State see PARA 505 ante.

2 Criminal Justice Act 1982 s 32(1)(a).

3 'Excluded offence' means:

25 (1) an offence (whether at common law or under any enactment) specified in ibid s 32, Sch 1 Pt I (s 32(2)(a)); and

26 (2) an offence under an enactment specified in Sch 1 Pt II (s 32(2)(b)) (see heads (i) to (xxi) infra); and

27 (3) an offence specified in Sch 1 Pt III (s 32(2)(c)).

The offences referred to in head (1) supra are: (a) manslaughter; (b) rape; (c) kidnapping; (d) assault of any description: Sch 1 Pt I (amended by the Public Order Act 1986 s 40(3), Sch 3).

The enactments referred to in head (2) supra are:

28 (i) the Malicious Damage Act 1861 ss 35, 47, 48 (s 35 as amended and ss 47, 48 repealed) (criminal damage) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 333, 344) (Criminal Justice Act 1982 Sch 1 Pt II);

29 (ii) the Offences Against the Person Act 1861 s 16 (as substituted) (making threats to kill), s 18 (as amended) (wounding with intent to do grievous bodily harm or to resist apprehension), s 20 (as amended) (wounding or inflicting grievous bodily harm), s 21 (as amended) (garotting), s 23 (as amended) (endangering life or causing harm by administering poison), s 28 (as amended) (burning, maiming, etc by explosion), s 29 (as amended) (causing explosions or casting corrosive fluids with intent to do grievous bodily harm) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 118 et seq) (Criminal Justice Act 1982 Sch 1 Pt II);

30 (iii) the Explosive Substances Act 1883 s 2 (as substituted) (causing explosion likely to endanger life or property) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 127) (Criminal Justice Act 1982 Sch 1 Pt II);

31 (iv) the Infant Life (Preservation) Act 1929 s 1 (child destruction) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 108) (Criminal Justice Act 1982 Sch 1 Pt II);

32 (v) the Infanticide Act 1938 s 1(1) (infanticide) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 103) (Criminal Justice Act 1982 Sch 1 Pt II);

33 (vi) the Sexual Offences Act 1956 s 12 (as amended) (buggery), s 17 (abduction of female by force) (Criminal Justice Act 1982 Sch 1 Pt II);

34 (vii) the Firearms Act 1968 s 17(1) (use of firearms and imitation firearms to resist arrest) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 676) (Criminal Justice Act 1982 Sch 1 Pt II);

35 (viii) the Theft Act 1968 s 8 (robbery), s 10 (aggravated burglary) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 293, 295) (Criminal Justice Act 1982 Sch 1 Pt II);

36 (ix) the Misuse of Drugs Act 1971 s 4 (production or supply of a controlled drug), s 5(3) (possession of a controlled drug with intent to supply it to another), s 20 (assisting in, or inducing the commission outside the United Kingdom of, an offence relating to drugs punishable under a corresponding law) (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARAS 249, 252, 260) (Criminal Justice Act 1982 Sch 1 Pt II);

37 (x) the Criminal Damage Act 1971 s 1(2)(b) (criminal damage, including arson, endangering life) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 334) (Criminal Justice Act 1982 Sch 1 Pt II);

38 (xi) the Road Traffic Act 1972 s 1 (repealed) (causing death by reckless driving) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE) (Criminal Justice Act 1982 Sch 1 Pt II);

39 (xii) the Customs and Excise Management Act 1979 s 85(2) (shooting at naval or revenue vessels) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 552) (Criminal Justice Act 1982 Sch 1 Pt II);

- 40 (xiii) the Aviation Security Act 1982 ss 1, 2, 3, 6 (hijacking, etc) (see AIR LAW vol 2 (2008) PARA 624 et seq) (Criminal Justice Act 1982 Sch 1 Pt II);
- 41 (xiv) the Drug Trafficking Offences Act 1986 s 23A (repealed) (acquisition, possession or use of proceeds of drug trafficking), s 24 (as amended) (assisting another to retain the benefit of drug trafficking) (Criminal Justice Act 1982 Sch 1 Pt II (amended by the Drug Trafficking Offences Act 1986 s 24(6); and the Criminal Justice Act 1993 s 74));
- 42 (xv) the Public Order Act 1986 s 1 (riot), s 2 (violent disorder), s 3 (affray) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 556, 557) (Criminal Justice Act 1982 Sch 1 Pt II (amended by the Public Order Act 1986 s 40(2), Sch 2 para 4));
- 43 (xvi) the Criminal Justice Act 1988 s 93A (assisting another to retain the benefit of criminal conduct), s 93B (acquisition, possession or use of proceeds of criminal conduct), s 93C (concealing or transferring proceeds of criminal conduct), s 134 (torture) (Criminal Justice Act 1982 Sch 1 Pt II (amended by the Criminal Justice Act 1988 s 170(1), Sch 15 para 91; and the Criminal Justice Act 1993 s 74));
- 44 (xvii) the Road Traffic Act 1988 s 1 (as substituted) (causing death by dangerous driving), s 3A (as added) (causing death by careless driving when under the influence of drink or drugs) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE) (Criminal Justice Act 1982 Sch 1 Pt II (amended by the Road Traffic (Consequential Provisions) Act 1988 s 4, Sch 3 para 24; and the Road Traffic Act 1991 s 48, Sch 4 para 17));
- 45 (xviii) the Criminal Justice (International Co-operation) Act 1990 s 14 (repealed) (concealing or transferring proceeds of drug trafficking) (Criminal Justice Act 1982 Sch 1 Pt II (amended by the Criminal Justice (International Co-operation) Act 1990 s 31(1), Sch 4 para 3));
- 46 (xix) the Aviation and Maritime Security Act 1990 s 1 (endangering safety at aerodromes) (see AIR LAW vol 2 (2008) PARA 631), s 9 (hijacking of ships), s 10 (seizing or exercising control of fixed platforms), ss 11-14 (s 14 as amended) (other offences relating to ships and fixed platforms) (see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1212 et seq) (Criminal Justice Act 1982 Sch 1 Pt II (amended by the Aviation and Maritime Security Act 1990 s 53(1), Sch 3 para 7));
- 47 (xx) the Channel Tunnel (Security) Order 1994, SI 1994/570, art 4 (hijacking of Channel Tunnel trains), art 5 (seizing or exercising control of the tunnel system), arts 6-8 (other offences relating to Channel Tunnel trains or the tunnel system) (Criminal Justice Act 1982 Sch 1 Pt II (amended by the Channel Tunnel (Security) Order 1994, SI 1994/570, art 38, Sch 3 para 3));
- 48 (xxi) the Drug Trafficking Act 1994 s 49 (concealing or transferring the proceeds of drug trafficking), s 50 (assisting another person to retain the benefit of drug trafficking), s 51 (acquisition, possession or use of proceeds of drug trafficking) (Criminal Justice Act 1982 Sch 1 Pt II (amended by the Drug Trafficking Act 1994 s 65(1), Sch 1 para 7)).

The offences referred to in head (3) supra are offences under the Customs and Excise Management Act 1979 ss 50(2) (as amended), (3) (as amended), 68(2) (as amended), 170 (as amended) (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARAS 243, 248) in connection with a prohibition or restriction on importation or exportation of a controlled drug which has effect by virtue of the Misuse of Drugs Act 1971 s 3 (see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 248): Criminal Justice Act 1982 Sch 1 Pt III.

4 Ibid s 32(1)(b).

5 Ibid s 32(1). At the date at which this volume states the law no such order had been made.

Section 32(1), (4), (6) applies in relation to any institution to which the Prison Act 1952 applies (see PARA 501 ante) and to persons detained in any such institutions other than persons serving sentences of custody for life, as they apply in relation to prisons and persons serving such sentences of imprisonment as are mentioned in the Criminal Justice Act 1982 s 32(1): s 32(7). Section 32(1), (4) applies in relation to secure training centres and persons detained in such centres as they apply, by virtue of the Prison Act 1952 s 43(5) (as amended) (see PARA 643 post), to young offender institutions and to persons detained in such institutions: Criminal Justice Act 1982 s 32(7A) (added by the Criminal Justice and Public Order Act 1994 s 168(2), Sch 10 para 50).

6 Criminal Justice Act 1982 s 32(3)(a).

7 Ibid s 32(3)(b).

8 Ibid s 32(4)(a). See also note 5 supra.

9 Ibid s 32(4)(b). See also note 5 supra.

- 10 Ibid s 32(4)(c). See also note 5 supra.
- 11 Ie within the meaning of the Powers of Criminal Courts Act 1973 s 28(4) (repealed).
- 12 The Criminal Justice Act 1982 refers to release on licence under the Criminal Justice Act 1967 s 60, but this provision has been repealed. As to release on licence see now para 620 et seq post.
- 13 See the Criminal Justice Act 1982 s 32(5).
- 14 Ibid s 32(6).
- 15 Ibid s 32(8).
- 16 Ibid s 32(9)(a).
- 17 Ibid s 32(9)(b).
- 18 Ibid s 32(10)(a).
- 19 Ibid s 32(10)(b).
- 20 Ibid s 32(11)(a).
- 21 In reckoning any period of 40 days, no account must be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days: ibid s 32(12).
- 22 Ibid s 32(11)(b).
- 23 Ibid s 32(13).

UPDATE

612-622 Release

For provision relating to polygraph conditions for certain offenders released on licence see PARA 622A.

613 Release to relieve overcrowding

TEXT AND NOTES 1-7--Criminal Justice Act 1982 s 32(1)(c), (1A), (2A) added, s 32(3)(b) amended: Armed Forces Act 2006 Sch 16 para 94.

NOTE 3--Heads (b), (vi) omitted: Criminal Justice Act 1982 Sch 1 Pt I (amended by the Sexual Offences Act 2003 Sch 7. See further Violent Crime Reduction Act 2006 s 55 (continuity of sexual offences law).

Also, heads (xxii) the Proceeds of Crime Act 2002 s 327 (concealing criminal property etc) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 791), s 328 (arrangements relating to criminal property) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 791), s 329 (acquisition, use and possession of criminal property) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 791) (1982 Act Sch 1 Pt II (amended by the 2002 Act Sch 11 para 13)); (xxiii) the 2003 Act ss 1, 2 (rape, assault by penetration) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 165), s 4 (causing a person to engage in sexual activity without consent), where the activity caused involved penetration within s 4(4)(a)-(d) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 165), ss 5, 6 (rape of a child under 13, assault of a child under 13 by penetration) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 166), s 8 (causing or inciting a child under 13 to engage in sexual activity), where an activity involving penetration within s 8(3)(a)-(d) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue)

PARA 172), s 30 (sexual activity with a person with a mental disorder impeding choice), where the touching involved penetration within s 30(3)(a)-(d) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 197), s 31 (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity), where an activity involving penetration within s 31(3)(a)-(d) was caused (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 201) (1982 Act Sch 1 Pt II (amended by the 2003 Act Sch 6 para 27)); (xxiv) the Domestic Violence, Crime and Victims Act 2004 s 5 (causing or allowing the death of a child or vulnerable adult) (1982 Act Sch 1 Pt II (amended by the 2004 Act Sch 10 para 16)).

TEXT AND NOTE 4--See further Serious Crime Act 2007 Sch 6 para 8 (references to common law offence of incitement).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/(i) Release/614. Release on home detention curfew licence.

614. Release on home detention curfew licence.

Where a short term prisoner aged 18 or over¹ is serving a sentence of imprisonment for a term of three months or more², the Secretary of State may, with certain exceptions³, release the prisoner on licence after he has served the requisite period⁴ for the term of his sentence⁵. A person may not be released under this provision unless the licence includes a condition ('the curfew condition') which (1) requires the released person to remain, for periods for the time being specified in the condition, at a place for the time being so specified⁶ (which may be an approved probation hostel⁷); and (2) includes requirements for securing the electronic monitoring of his whereabouts during the periods for the time being so specified⁸. The curfew condition remains in force until the date when the released person would (but for his release) have served one-half of his sentence⁹.

1 The Secretary of State may amend this age limit by order: see the Criminal Justice Act 1991 s 34A(5)(a) (s 34A added by the Crime and Disorder Act 1998 s 99). Such an order may make such transitional provision as appears expedient in this connection: Criminal Justice Act 1991 s 34A(5)(c) (as so added). No such order may be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament (see s 34A(6) (as so added)). As to the Secretary of State see PARA 505 ante.

2 Ibid s 34A(1) (as added: see note 1 supra).

3 The Criminal Justice Act 1991 s 34A(3) (as added) does not apply where (1) the sentence is an extended sentence within the meaning of the Crime and Disorder Act 1998 s 58 (see PARA 617 post); (2) the sentence is for an offence under the Prisoners (Return to Custody) Act 1995 s 1 (see PARA 540 ante); (3) the sentence was imposed under the Criminal Justice Act 1991 s 14(1), Sch 2 para 3(1)(d) (as amended) or 4(1)(d) (as amended) in a case where the prisoner had failed to comply with a requirement of a curfew order; (4) the prisoner is subject to a hospital order, hospital direction or transfer direction under the Mental Health Act 1983 s 37 (as amended), s 45A (as added) or s 47 (as amended) (see MENTAL HEALTH vol 30(2) (Reissue) PARA 486 et seq); (5) the prisoner is liable to removal from the United Kingdom for the purposes of the Criminal Justice Act 1991 s 46 (repealed as from a day to be appointed by the Crime (Sentences) Act 1997 s 56, Schs 5, 6); (6) the prisoner has been released on licence under the Criminal Justice Act 1991 s 34A (as added) at any time and has been recalled to prison under s 38A(1)(a) (as added); (7) the prisoner has been released on licence under s 34A (as added) or s 36 (repealed as from a day to be appointed by the Crime (Sentences) Act 1997 Schs 5, 6) during the currency of the sentence, and has been recalled to prison under the Criminal Justice Act 1991 s 39(1) or (2) (repealed as from a day to be appointed by the Crime (Sentences) Act 1997 Schs 5, 6); (8) the prisoner has been returned to prison under the Criminal Justice Act 1991 s 40 (repealed as from a day to be appointed by the Crime (Sentences) Act 1997 Schs 5, 6 as from a day to be appointed) at any time; or (9) the interval between the date on which the prisoner will have served the requisite period (see note 4 infra) for the term of the sentence and the date on which he will have served one-half of the sentence is less than 14 days: Criminal Justice Act 1991 s 34A(2) (as added: see note 1 supra).

4 For these purposes, 'the requisite period' means: (1) for a term of three months or more but less than four months, a period of 30 days; (2) for a term of four months or more but less than eight months, a period equal to one-quarter of the term; (3) for a term of eight months or more, a period that is 60 days less than one-half of the term: *ibid* s 34A(4) (as added: see note 1 supra). The Secretary of State may by order amend this definition: s 34A(5)(b) (as so added). See also s 34A(5)(c); and note 1 supra.

5 Ibid s 34A(3) (as added: see note 1 supra).

6 The curfew condition may specify different places or different periods for different days, but must not specify periods which amount to less than nine hours in any one day (excluding for this purpose the first and last days of the period for which the condition is in force): *ibid* s 37A(2) (s 37A added by the Crime and Disorder Act 1998 s 100(1)).

7 'Approved probation hostel' has the same meaning as in the Probation Service Act 1993 s 30(1): Criminal Justice Act 1991 s 37A(7) (as added: see note 6 supra).

8 Ibid s 37A(1) (as added: see note 6 supra). The curfew condition must include provision for making a person responsible for monitoring the released person's whereabouts during the periods for the time being specified in the condition; and a person who is made so responsible must be of a description specified in an order made by the Secretary of State: s 37A(4) (as so added). The power to make such an order is exercisable by statutory instrument, and includes power to make different provision for different cases or classes of case or for different areas: s 37A(5) (as so added).

Nothing in these provisions is to be taken to require the Secretary of State to ensure that arrangements are made for the electronic monitoring of the released person's whereabouts in any particular part of England and Wales: s 37A(6) (as so added).

9 Ibid s 37A(3) (as added: see note 6 supra). As to breach of the curfew condition see PARA 624 post.

UPDATE

612-622 Release

For provision relating to polygraph conditions for certain offenders released on licence see PARA 622A.

614 Release on home detention curfew licence

TEXT AND NOTES--Replaced. A curfew condition complying with the Criminal Justice Act 2003 s 253 must be included in a licence under s 246: s 250(5).

A curfew condition (1) requires the released person to remain for a specified period or specified periods in a specified place or places and includes requirements for securing the electronic monitoring (see s 253(5), (6)) of his whereabouts during the periods for the time being so specified; (2) cannot last for less than nine hours in any one day (excluding for this purpose the first and last days of the period for which the condition is in force); and (3) is to remain in force until the date the released person (but for his release) would have been released from prison: s 253(1)-(3) (s 253(1) amended by SI 2008/912). As to the persons responsible for the electronic monitoring of offenders subject to a curfew condition see the Criminal Justice (Sentencing) (Curfew Condition) Order 2008, SI 2008/2768.

As to the curfew condition in sentences of intermittent custody see the 2003 Act s 253(4).

As to the approach where a person has been convicted of multiple terms of imprisonment, not all of which are over 12 months in length, see *R (on the application of Noone) v Governor of HMP Drake Hall* [2008] EWCA Civ 1097, [2009] 1 All ER 494.

The maximum period available for home detention curfew remains at 135 days, which period may be amended by the Secretary of State by order: see the Criminal Justice Act 2003 s 246 (amended by the Domestic Violence, Crime and Victims Act 2004 Sch 6 para 3; the Armed Forces Act 2006 Sch 16 para 221; and the Criminal Justice and Immigration Act 2008 ss 22(2), 24). See *Mason v Secretary of State for Justice* [2008] EWHC 1787 (QB), [2009] 1 All ER 1128.

In the absence of exceptional circumstances, prisoners required to register under the Sex Offenders Act 1997 (repealed) are not eligible for release on home detention curfew licence: *R v Secretary of State for the Home Department, ex p Willis* (2000) Times, 22 March.

The Secretary of State should exercise his discretion to release prisoners under electronic tagging provisions in a manner which avoids injustice to, for example, a younger co-defendant: *R v Cooper (Toby)* (2000) Times, 5 April, CA. As to the right of appeal from a decision not to grant release on home detention curfew, see *R v*

Secretary of State for the Home Department, ex p Allen (2000) Times, 21 March, CA.
See also *R v Abdullah Al-Buhairi* [2003] EWCA Crim 2922, [2004] 1 Cr App Rep (S) 496
(when sentencing, judges are not required to speculate whether an offender is likely to
be released under the home detention curfew scheme).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/(i) Release/615. Compassionate release.

615. Compassionate release.

The Secretary of State¹ may at any time release a short term or long term prisoner on licence if he is satisfied that exceptional circumstances exist which justify the prisoner's release on compassionate grounds². Before so releasing a prisoner the Secretary of State must consult the Parole Board³, unless the circumstances are such as to render such consultation impracticable⁴. A similar power exists in relation to life prisoners⁵ and, similarly, the Secretary of State must, before releasing a life prisoner on compassionate grounds, consult the Parole Board, unless the circumstances are such as to render such consultation impracticable⁶.

1 As to the Secretary of State see PARA 505 ante.

2 See the Criminal Justice Act 1991 s 36(1) (amended by the Crime and Disorder Act 1998 s 119, Sch 8 para 82). The Criminal Justice Act 1991 s 36 has been repealed so far as it relates to life prisoners: see the Crime (Sentences) Act 1997 s 56(2), Sch 6; and the Crime (Sentences) Act 1997 (Commencement No 2 and Transitional Provisions) Order 1997, SI 1997/2200, art 2. For the meaning of 'long term prisoner' and 'short term prisoner' see PARA 617 post.

Administrative guidance, contained in the Parole Manual, Prison Service Order 6000, Ch 10, App 5, issued on behalf of the Secretary of State (not under any statutory authority) indicate the criteria which are applied in each case where release on compassionate grounds is sought.

In a case which raises medical factors, the criteria are (1) whether the prisoner is suffering from a terminal illness and death is likely to occur soon or the prisoner is bedridden or similarly incapacitated; (2) the risk of re-offending is past; (3) there are adequate arrangements for the prisoner's care and treatment outside prisons; and (4) early release will bring some significant benefit to the prisoner or his family.

In a case of tragic family circumstances, the criteria are (a) whether the circumstances of the prisoner or the family have changed to the extent that if he served the sentence imposed, the hardship suffered would be of exceptional severity greater than the court could have foreseen; (b) the risk of re-offending is past; (c) it can be demonstrated that there is a real and urgent need for the prisoner's permanent presence with his family; and (d) early release will bring some significant benefit to the prisoner or his family.

3 As to the Parole Board see PARAS 618-619 post.

4 See the Criminal Justice Act 1991 s 36(2). This provision no longer applies to life prisoners: see note 2 supra; and text and note 5 infra.

5 See the Crime (Sentences) Act 1997 s 30(1). The release criteria are the same for life prisoners as for determinate prisoners: see note 2 supra.

6 See *ibid* s 30(2).

UPDATE

612-622 Release

For provision relating to polygraph conditions for certain offenders released on licence see PARA 622A.

615 Compassionate release

TEXT AND NOTES 1-4--Replaced. The Secretary of State has a duty under the Criminal Justice Act 2003 s 248(1) to release a fixed-term prisoner (see PARA 618) on licence. All licences must include the standard conditions (ie such conditions as may be prescribed

for these purposes) in so far as they are not inconsistent with the other licence conditions: see s 250 (amended by the Domestic Violence, Crime and Victims Act 2004 Sch 6 para 5; Armed Forces Act 2006 Sch 16 para 222; Offender Management Act 2007 s 28(5) (s 28(5) in force in relation to specified areas for specified period: SI 2009/32)); Criminal Justice (Sentencing) (Licence Conditions) Order 2005, SI 2005/648. As to the licence conditions on re-release of a prisoner serving a sentence of less than 12 months see the 2003 Act s 251 (amended by the Armed Forces Act 2006 Sch 16 para 223) under which the Secretary of State has the power to reset the conditions, which must include standard conditions and may include drug testing or electronic monitoring, or conditions prescribed by the Secretary of State in an order. A person subject to a licence must comply with any conditions attached to it: see s 252 (amended by the Armed Forces Act 2006 Sch 16 para 224).

NOTES 5, 6--While this power has to be exercised so as not to provoke a breach of the European Convention on Human Rights art 3 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 124), on the proper construction of the 1997 Act s 30, the Board has no role to play in disciplining the Secretary of State for actual, current breaches of the Convention art 3; that role is to be played by the court, which has to determine whether an actual breach of art 3 is in progress and, if so, to require its termination: *R (on the application of Spinks) v Secretary of State for the Home Department* [2005] All ER (D) 297 (Jan), CA.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/(i) Release/616. Release by prerogative.

616. Release by prerogative.

The royal prerogative of mercy may be extended at any time to a person sentenced to imprisonment or other form of detention. The prerogative, although sparingly exercised for reasons of constitutional propriety associated with the inviolability of the judicial process and general non-interference by executive action, is not restricted by the fact that an appeal is pending before, or has been dismissed by, the Criminal Division of the Court of Appeal¹. It may rarely be exercised in the form of a pardon²; more commonly prisoners benefit from a reduction of the whole or a part of the court's sentence, which is signified under the sign manual in each particular case. The occasions for clemency might be, for example, medical grounds; fresh evidence indicating a wrongful conviction revealed too late or unavailable for consideration by the court of trial but insufficiently conclusive to justify a pardon; exceptionally meritorious conduct by the prisoner during his imprisonment; as a reward for supplying valuable information to the authorities investigating serious crime; to compensate a prisoner for physical injury suffered in prison through no fault of his own; or to mitigate for him the consequences of some irregularity at a summary trial³.

¹ See the Criminal Appeal Act 1968 s 49; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1978.

² As to pardon and reprieves see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 823-830; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1978.

³ If an irregularity is such as to make the whole proceedings null and void, the Secretary of State may order a prisoner to be released, but this is, strictly speaking, not an exercise of the prerogative of mercy. As to the Secretary of State see PARA 505 ante.

UPDATE

612-622 Release

For provision relating to polygraph conditions for certain offenders released on licence see PARA 622A.

616 Release by prerogative

NOTE 3--As to the granting of a pardon under the Convention on the Transfer of Sentenced Persons 1983 (see PARA 555) see *R (on the application of Shields) v Secretary of State for Justice* [2008] EWHC 3102 (Admin), [2010] QB 150, [2009] 3 All ER 265.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/(i) Release/617. Duty to release short term and long term prisoners.

617. Duty to release short term and long term prisoners.

Prisoners are entitled to be released before they have served the full term of their sentence¹. The proportion of his sentence which a prisoner must serve before he can be released depends upon whether he is a short term² or long term prisoner³.

As soon as a short term prisoner has served one-half of his sentence⁴, it is the duty of the Secretary of State⁵:

- 138 (1) to release him unconditionally if that sentence is for a term of less than 12 months⁶; and
- 139 (2) to release him on licence if that sentence is for a term of 12 months or more⁷.

As soon as a long term prisoner has served two-thirds of his sentence⁸, it is the duty of the Secretary of State to release him on licence⁹.

As soon as a short term prisoner serving a sentence of less than 12 months, who has been released on licence¹⁰, and has been recalled to prison¹¹ would (but for his release) have served one-half of his sentence¹² it is the duty of the Secretary of State to release him unconditionally¹³.

As soon as a long term prisoner or a short term prisoner whose sentence is for a term of 12 months or more, who has been released on licence¹⁴ and has then been recalled to prison¹⁵, would (but for his release) have served three-quarters of his sentence¹⁶, it is the duty of the Secretary of State to release him on licence¹⁷.

In relation to a short term prisoner who is serving a sentence carrying an extended period of supervision¹⁸, it is the duty of the Secretary of State to release him on licence as soon as he has served one half of his sentence¹⁹. As soon as a long term prisoner serving an extended sentence has served two thirds of his sentence²⁰, it is the duty of the Secretary of State to release him on licence²¹. The Secretary of State must release a long term prisoner serving an extended sentence, who has been recalled to prison²² at the end of the extension period²³.

As soon as a prisoner whose sentence is more than 12 months who has been released on a home detention curfew licence²⁴ and recalled to prison²⁵ would but for his release have served one half of his sentence²⁶, it is the duty of the Secretary of State to release him on licence²⁷.

In the case of a prisoner who has been released on licence²⁸ and has been recalled to prison²⁹, and has been subsequently released on licence³⁰ and recalled to prison³¹,

it is the duty of the Secretary of State to release him after he has served the whole of his sentence³².

Where a court passes on a person a sentence of imprisonment which is for a term of 12 months or less, and that includes or consists of an order under the provisions relating to convictions for a new offence³³, as soon as he has served one-half of the sentence it is the duty of the Secretary of State to release him on licence³⁴. Where a person is so released, the licence remains in force for three months³⁵.

In relation to a person committed to prison or detained (a) in default of payment of a sum adjudged to be paid by a conviction; or (b) for contempt of court or any kindred offence³⁶, it is the duty of the Secretary of State to release him unconditionally as soon as he has served half

of the period of commitment if it is for less than 12 months, and two thirds of that period if it is for more than 12 months³⁷. As soon as a person so committed who has been released on licence³⁸ and recalled to prison³⁹ would (but for his release) have served one half of the period of commitment if that period is less than 12 months, and two thirds if it is more, it is the duty of the Secretary of State to release him unconditionally⁴⁰.

1 The statutory scheme regulating the release of determinate sentence prisoners is substantially contained in the Criminal Justice Act 1991 Pt II (ss 32-51) (as amended). As to indeterminate sentence prisoners see PARAS 621-622 post.

2 For the purposes of the Criminal Justice Act 1991 Pt II (as amended), 'short term prisoner' means a person serving a sentence of imprisonment for a term of less than four years: ss 33(5), 51(1). 'Sentence of imprisonment' does not include a committal in default of payment of any sum of money, or for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone: Criminal Justice Act 1991 s 51(1). See also s 40(4)(a); and PARA 625 text and note 15 post. The Secretary of State may by order made by statutory instrument provide that the references in s 33(5) to four years must be construed as references to such other period as may be specified in the order: s 49(1)(a). Such an order may make such transitional provisions as appear necessary or expedient in connection with any provision made in the order: s 49(2).

For the purposes of any reference in Pt II to the term of imprisonment to which a person has been sentenced or which, or part of which, he has served, consecutive terms and terms which are partly or wholly concurrent must be treated as a single term if the sentences were passed on the same occasion, or, where they were passed on different occasions, the person has not been released under Pt II at any time during the period beginning with the first and ending with the last of those occasions: s 51(2) (substituted by the Crime and Disorder Act 1998). This embraces the decision in *R v Secretary of State for the Home Department, ex p Francois* (1998) Times, 13 March, HL. As to the Secretary of State see PARA 505 ante.

Where a suspended sentence of imprisonment is ordered to take effect, with or without any variation of the original term, the occasion on which that order is made is treated for this purpose as the occasion on which the sentence is passed: Criminal Justice Act 1991 s 51(2A) (s 51(2A)-(2D) added by the Crime and Disorder Act 1998 s 101(1)). Where a person has been sentenced to two or more terms of imprisonment which are wholly or partly concurrent and do not fall to be treated as a single term, nothing in the Criminal Justice Act 1991 Pt II requires the Secretary of State to release him in respect of any of the terms unless and until the Secretary of State is required to release him in respect of each of the others: s 51(2B)(a) (as so added). Neither is the Secretary of State or the Parole Board required to consider his release in respect of any of the terms unless and until the Secretary of State or the Board is required to consider his release, or the Secretary of State is required to release him, in respect of each of the others: s 51(2B)(b) (as so added). On and after his release he is on licence for so long, and subject to such conditions, as is required by Pt II in respect of any of the sentences: s 51(2B)(c) (as so added). The date mentioned in s 40(1) (see PARA 625 post) must be taken to be that on which he would (but for his release) have served each of the sentences in full: s 51(2B)(c) (as so added).

Where a person has been sentenced to one or more terms of imprisonment and to one or more life sentences, nothing in Pt II requires the Secretary of State to release the person in respect of any of the terms unless and until he is required to release him in respect of each of the life sentences; or requires the Secretary of State or the Board to consider the person's release in respect of any of the terms unless and until the Secretary of State or the Board is required to consider his release in respect of each of the life sentences: s 51(2C) (as so added). Section 51(2B), (2C) (as added) has effect as if the term of an extended sentence (see text and notes 18-23 *infra*) included the extension period: s 51(2D) (as so added).

3 For the purposes of *ibid* Pt II (as amended), 'long term prisoner' means a person serving a sentence of imprisonment for a term of four years or more: s 33(5). This refers to the sentence pronounced by the court, not the sentence as reduced by time already spent in custody: *R v Secretary of State for the Home Department, ex p Probyn* [1998] 1 All ER 357, DC. As to the position where a short term prisoner becomes a long term prisoner following his subsequent conviction and sentence for further offences see *R v Secretary of State for the Home Department, ex p Francois* (1998) Times, 13 March, HL; and now the Criminal Justice Act 1991 s 51(2) (as substituted) (see note 2 *supra*).

4 As to the proper calculation of the term of imprisonment which a prisoner has served for the purposes of the release provisions contained in *ibid* Pt II see the Prison Act 1952 s 49 (as amended: see PARA 540 ante); the Criminal Justice Act 1967 ss 67, 104 (both as amended); the Criminal Justice Act 1991 ss 41, 42, 47 (amended by the Criminal Justice and Public Order Act 1994 s 168(1), Sch 9 para 48(1)); and the Criminal Justice Act 1991 s 51 (amended by Crime and Disorder Act 1998 ss 101(1), 119, 120(1), Sch 8 para 92; and as preserved in respect of transitional prisoners by Sch 9 para 11). See also SENTENCING AND DISPOSITION OF OFFENDERS. The Secretary of State may by order made by statutory instrument provide that any reference in the Criminal Justice Act 1991 Pt II to a particular proportion of a prisoner's sentence is construed as a reference to such other

proportion of a prisoner's sentence as may be specified: s 49(1)(b). Such an order may make such transitional provisions as appear necessary or expedient in connection with any provision made in the order: s 49(2).

5 Ibid s 33(1).

6 Ibid s 33(1)(a). In respect of a person serving sentences of detention in a young offender institution or determinate sentences under the Children and Young Persons Act 1933 s 53 (as amended) it is the duty of the Secretary of State to release him unconditionally if his sentence is for a term of 12 months or less: Criminal Justice Act 1991 s 43(1), (4)(a). It is also his duty to do so in respect of adult prisoners serving sentences for a term of 12 months who were sentenced before Pt II came into force on 1 October 1992: Sch 12 paras 8(1), (2) and (4).

7 Ibid s 33(1)(b). In respect of a person serving sentences of detention in a young offender institution or determinate sentences under the Children and Young Persons Act 1933 s 53 (as amended) it is the duty of the Secretary of State to release him on licence if his sentence is for a term of more than 12 months: Criminal Justice Act 1991 s 43(1), (4)(b). As to the recall of short term prisoners see PARA 623 post. As to their supervision see PARA 627 et seq post.

8 See note 4 supra.

9 Criminal Justice Act 1991 s 33(2). In relation to a prisoner sentenced to a term of more than 12 months before 1 October 1992 when the Criminal Justice Act 1991 came into force (an 'existing prisoner'), it is the duty of the Secretary of State to release him unconditionally (Sch 12 para 8(6)(b)). In respect of existing prisoners or licensees who are serving determinate sentences under the Children and Young Persons Act 1933 s 53 (as amended) there is no right to early release, as they fall to be treated as mandatory life sentence prisoners for the purposes of Criminal Justice Act 1991 Pt II: Sch 12 para 11(a). 'Existing licensee' means any person who, before the commencement of the Criminal Justice Act 1991 Pt II has been released on licence under the Criminal Justice Act 1967 s 60 and whose licence under that section is in force at commencement; and 'existing prisoner' means any person who, at commencement, is serving a custodial sentence: Criminal Justice Act 1991 Sch 12 para 8(1). Section 33 does not apply to life prisoners. Under the Children and Young Persons Act 1933 s 53 determinate sentence prisoners may, nonetheless, apply for early release as soon as they have served half of the sentence: see PARA 620 post. As to release of mandatory life sentence prisoners see PARA 622 post.

The Criminal Justice Act 1991 Sch 12 contains transitional provisions, the object of which are to ensure that prisoners sentenced before the Criminal Justice Act 1991 came into force are not treated any less favourably than at the time they were sentenced. Prisoners serving determinate sentences are not subject to the risk of being ordered to be returned to prison to serve the remainder of their sentence under s 40 (amended by the Criminal Justice and Public Order Act 1994 s 168(1), (2), Sch 9 para 47, Sch 10 para 67; and the Crime and Disorder Act 1998 ss 106, 119, Sch 7 para 43, Sch 8 para 85), following conviction for an offence committed while they were serving their sentence in the community: Sch 12 para 8(3). As to orders for return to prison see PARA 625 post.

10 Ie under the Criminal Justice Act 1991 s 34A(3) (s 34A as added: see PARA 614 ante) (home detention curfew licence) or s 36(1) (as amended: see PARA 615 ante) (compassionate licence): s 33A(1) (s 33A added by the Crime and Disorder Act 1998 Sch 8 para 81).

11 Ie under ibid s 38A(1) (as added: see PARA 624 post) or s 39(1), (2) (as repealed with savings: see PARA 623 post): s 33A(1) (as added: see note 10 supra). In relation to any prisoner whose sentence, or any part of whose sentence, was imposed for an offence committed before 1 January 1999, this provision has effect as if the prisoner was recalled to prison under s 38(2) (repealed with savings: see PARA 623 note 7 post) or s 38A(1) (as added): Crime and Disorder Act 1998 Sch 9 para 12(1), (4)(a).

12 See note 4 supra.

13 Criminal Justice Act 1991 s 33A(1) (as added: see note 10 supra).

14 Ie under ibid Pt II: see s 33(3)(a) (amended by the Crime and Disorder Act 1998 Sch 8 para 80(1)(a)).

15 Ie under the Criminal Justice Act 1991 s 39(1) or (2) (see PARA 623 post): s 33(3)(b) (amended by the Crime and Disorder Act 1998 Sch 8 para 80(1)(b)). As to the recall of short term prisoners see PARA 623 post. As to the recall of long term prisoners see PARA 623 post. As to their supervision on licence see PARA 627 post. As to the re-release of recalled short term prisoners released on home detention curfew licences see the text and notes 10-13 supra (where their sentence was for less than 12 months) and notes 20-23 infra (sentences 12 months or more).

16 See note 4 supra.

17 Criminal Justice Act 1991 s 33(3) (amended by the Crime and Disorder Act 1998 s 104(1)).

In relation to a prisoner whose sentence, or any part of whose sentence was imposed before the Crime and Disorder Act 1998 s 104(1) came into effect, ie before 30 September 1998, it is the duty of the Secretary of State to release him unconditionally: Criminal Justice Act 1991 s 33(3) (as originally enacted); Crime and Disorder Act 1998 Sch 9 para 13. Such prisoners cannot be recalled to prison but remain at risk of being returned to prison if they commit an offence before their sentence has expired: see the Criminal Justice Act 1991 s 40 (as amended: see PARA 625 post). In relation to prisoners sentenced before 30 September 1998 for a sexual offence and in respect of whom the court ordered that s 44 should apply, their release at the three-quarters point is on licence: s 44 (as originally enacted). In relation to existing prisoners whose sentences are for a term of more than 12 months (except those serving determinate sentences under the Children and Young Persons Act 1933 s 53 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1397)), the Criminal Justice Act 1991 s 33(3) applies as if the reference to three-quarters of the sentence were a reference to two-thirds of that sentence: Sch 12 para 8(6)(b).

18 Ie in accordance with the Crime and Disorder Act 1998 s 58. Such a sentence can only be imposed on or after 30 September 1998.

19 Criminal Justice Act 1998 s 44(1), (2), (4) (substituted by the Crime and Disorder Act 1998 s 59). The Criminal Justice Act 1991 Pt II has effect, subject to exceptions, as if the term of the extended sentence does not include the extension period: s 44(2) (as so substituted). 'Extension period' has the meaning given in the Crime and Disorder Act 1998 s 58 (2)(b), namely a further period in addition to the custodial term for which the offender is to be subject to a licence and which is of such length as the court considers necessary to prevent the commission of further offences and to secure his rehabilitation. 'Custodial term' means the term of the custodial sentence that the court would have imposed had it not passed an extended sentence: s 58(2)(a). Thus for the purpose of ascertaining whether the prisoner is a short or long term prisoner in relation to the calculation of the date at which he has served the necessary portion of his sentence as to entitle him to be released, only the custodial term is taken into account. As to the determination whether he is a short term or long term prisoner in relation to the provisions for recall as contained in the Criminal Justice Act 1991 Pt II see note 22 infra.

20 Ibid s 44(2) (as substituted: see note 19 supra).

21 Ibid s 44 (1), (2), (4) (as substituted: see note 19 supra).

22 Ie under ibid ss 39(1), (2), 44A (added by the Crime and Disorder Act 1998 s 60). As to the recall of long term extended sentence prisoners see PARA 623 post. For the purposes of calculating whether an extended sentence prisoner is a short term or long term prisoner for the purposes of the recall provisions contained in the Criminal Justice Act 1991 Pt II, ie s 38 (short term prisoners whose sentence or part of whose sentence was imposed in respect of an offence committed before 1 January 1999: see the Crime and Disorder Act 1998 Sch 9 para 12) and the Criminal Justice Act 1991 s 39(1) or (2) (short term prisoners sentenced after 1 January 1999 and long term prisoners) the overall length of sentence is taken into account, ie both the custodial term and the extension period: Criminal Justice Act 1991 s 44(7) (as substituted: see note 19 supra); Crime and Disorder Act 1998 Sch 9 para 12(7)(b).

23 Criminal Justice Act 1991 s 33(3A) (added by the Crime and Disorder Act 1998 Sch 8 para 80). Recalled extended sentence prisoners are entitled to seek discretionary release by having their cases referred to the Parole Board, which is empowered to direct their release: Criminal Justice Act 1991 ss 39(5A), 44A (added by the Crime and Disorder Act s 60, and Sch 8 para 84). As to parole following recall in the cases of extended sentence prisoners see PARA 623 post.

The Secretary of State must release a short term extended sentence prisoner who has been recalled to prison by order of the magistrates court as soon as he has served the period during which the court ordered his recall: see Criminal Justice Act 1991 s 38(2)(b). Section 38 is repealed in respect of all prisoners sentenced after 1 January 1999: Crime and Disorder Act 1998 s 103(2). Prisoners so sentenced can only be returned to prison in accordance with the powers conferred on the Secretary of State and Parole Board under the Criminal Justice Act 1991 s 39: Crime and Disorder Act 1998 s 103(3). As to those powers see PARA 623 post. All short term extended sentence prisoners sentenced after 1 January 1999, like their long term counterparts, have no right to be released until they have served the entire period of their sentence including the extension period: Criminal Justice Act 1991 s 33(3A) (as so added). However, unlike them they will have no right to apply to the Parole Board for early release. As to the re-release of long term extended sentence prisoners see note 23 supra.

24 Ie under ibid s 34A(3) (s 34A as added: see PARA 614 ante): see s 33A(2)(b) (as added: see note 10 supra).

25 Ie under ibid s 38A(1): see s 33A(2)(b) (as added: see note 10 supra).

26 See note 4 supra.

27 Criminal Justice Act 1991 s 33A(2) (as added: see note 10 supra).

28 Ie under ibid Pt II: s 33A(3)(a) (as added: see note 10 supra).

29 Ie under ibid s 39(1) or (2) (see PARA 623 post): s 33A(3)(a) (as added: see note 10 supra). In relation to any prisoner whose sentence, or any part of whose sentence, was imposed for an offence committed before 1 January 1999, this provision has effect as if the prisoner was recalled to prison under s 38(2) (repealed with savings: see PARA 623 note 7 post): Crime and Disorder Act 1998 Sch 9 para 12(1), (4)(b).

30 Ie under the Criminal Justice Act 1991 s 33(3) (see note 17 supra) or 33(3A): see s 33A(3)(b) (as added: see note 10 supra).

31 Ie under ibid s 39(1) or s 39(2) (see PARA 623 post): s 33A(3)(a) (as added: see note 10 supra). As to the application of this provision to prisoners whose sentence was imposed before 1 January 1999 see note 25 supra.

32 See ibid s 33A(3) (as added: see note 10 supra). Such prisoners will not, therefore, be subject to any supervision on licence when released. As to supervision on licence see PARA 627 et seq post.

33 Ie an order under ibid s 40 (as amended) (see PARA 625 post).

34 Ibid s 40A(1), (2) (s 40A added by the Crime and Disorder Act 1998 s 105). This provision applies in place of the Criminal Justice Act 1991 ss 33 (as amended: see note 17 supra), 33A (as added), 37(1) (as amended), 39: s 40A(1) (as so added). This provision was added to ensure that prisoners who had failed to comply with the early release provisions of the Criminal Justice Act 1991, by committing further offences while in the community during the currency of their sentence, would be subject to a period of supervision on their release. Without the provision such prisoners would have been released unconditionally, in accordance with s 33(1)(a) (see the text and note 6 supra). As to the period during which the licence remains in force see PARA 627 post. If the person fails to comply with such conditions as may for the time being be specified in the licence, he is liable on summary conviction: (1) to a fine not exceeding level 3 on the standard scale; or (2) to a sentence of imprisonment for a term not exceeding the relevant period but not liable to be dealt with in any other way: s 40A(4) (as so added). As to the standard scale see PARA 517 note 4 ante. 'The relevant period' means the period which is equal in length to the period between the date on which the failure occurred or began and the date of the expiry of the licence: s 40A(5) (as so added). As soon as the person has served one-half of a sentence passed under s 40A(4), it is the duty of the Secretary of State to release him, subject to the licence if it is still subsisting: s 40A(6). Prisoners serving a s 40 sentence of 12 months or more are released in accordance with the general release provisions: ie if they are short term prisoners under s 33(1)(b) (see the text and note 6 supra), and if they are long term prisoners under s 33(2) (see the text and note 9 supra) or s 35(1) (para 620 post). In relation to any prisoner whose sentence, or any part of whose sentence, was imposed for an offence committed before 1 January 1999, s 40A (as added) applies in place of ss 33 (as amended), 33A (as added), 37(1) (as amended) and 38 (repealed with savings: see PARA 623 note 7 post): Crime and Disorder Act 1998 Sch 9 para 12(1), (6).

35 Criminal Justice Act 1991 s 40A(3) (as added: see note 30 supra).

36 Ie under the Criminal Justice Act 1982 s 9. As to the powers to commit persons to prison for contempt see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 502 et seq. As to contempt prisoners see also PARA 699 post.

37 Criminal Justice Act 1991 s 45(3) (amended by the Crime and Disorder Act 1998 Sch 8 para 88). The provisions of the Criminal Justice Act 1991 Pt II, except ss 33A (as added: see note 10 supra) (re-release of prisoners subject to home detention curfews: see PARA 614 ante), 34A (as added: see PARA 614 ante) (release on home detention curfews), 35 (see PARA 620 post) (discretionary release of long term prisoners) and 40 (as amended: see PARA 625 post) (return to prison following commission of an offence) apply to such prisoners as they apply to persons serving equivalent sentences of imprisonment, and references to short term and long term prisoners, or to prison or imprisonment are construed accordingly: see s 45(1) (as amended); and PARA 620 post. As to the meaning of short term prisoner see note 2 supra. As to the meaning of long term prisoner see note 3 supra.

38 Ie under ibid s 36(1) (release on compassionate grounds): see PARA 615 ante.

39 Ie (1) under ibid s 38 (see note 23 supra) if he is a short term prisoner whose sentence, or part of whose sentence was imposed in respect of an offence committed before 1 January 1999 (s 45(1), (3); Crime and Disorder Act 1998 Sch 9 para 12(8); Crime and Disorder Act 1988 (Commencement No 3 and Appointed Day) Order 1998, SI 1998/3263); or (2) under the Criminal Justice Act 1991 s 39(1) or (2) if he is a long term prisoner (s 45(1), (3) (as amended)).

40 Ibid s 45(3) (as amended: see note 37 supra).

UPDATE

612-622 Release

For provision relating to polygraph conditions for certain offenders released on licence see PARA 622A.

617 Duty to release short term and long term prisoners

TEXT AND NOTES--Replaced in relation to fixed-term prisoners (see PARA 618), other than prisoners to whom the Criminal Justice Act 2003 s 247 applies. As soon as such a prisoner has served the requisite custodial period, it is the duty of the Secretary of State to release him on licence: s 244 (amended by the Domestic Violence, Crime and Victims Act 2004 Sch 6 para 2(b)). An intermittent custody prisoner (ie a prisoner serving a sentence of imprisonment to which an intermittent custody order relates) who has been returned to custody following a period unlawfully at large does not have to be released under the 2003 Act s 244: ss 245, 268.

As soon as a prisoner who is serving an extended sentence imposed under s 227 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 75) or 228 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84) has served one-half of the appropriate custodial term (ie the period determined by the court as the appropriate custodial term under s 227 or 228) it is the duty of the Secretary of State to release him on licence: s 247(1), (2), (7) (s 247(2) amended by Criminal Justice and Immigration Act 2008 s 25(2), Sch 28 Pt 2). See *R (on the application of O'Connell) v Parole Board* [2007] EWHC 2591 (Admin), [2008] 1 WLR 979, DC; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 127.

Subject to the 2003 Act ss 263(2), 264(3), (4), where a fixed-term prisoner is released on licence, the licence remains in force, subject to any revocation under s 254 or 255, for the remainder of his sentence: s 249(1), (3). Subject to s 264(3), where an intermittent custody prisoner is released on licence under s 244, the licence remains in force, subject to any revocation under s 254, until the time when he is required to return to prison at the beginning of the next custodial period (ie any period which is not a licence period as defined by s 183(3)) of the sentence, or where it is granted at the end of the last custodial period, for the remainder of his sentence: s 249(2)-(4) (s 249(3) amended by the 2004 Act Sch 6 para 4).

Where a person is serving two or more terms of imprisonment concurrently, he must serve the longest custodial period of the sentences which have been passed before being released on licence and he will remain on licence until the expiry of the longest sentence: see the 2003 Act s 263(1), (2) (s 263(1) amended by the Armed Forces Act 2006 Sch 16 para 226). Where a sentence of more than and a sentence of less than 12 months are ordered to be served concurrently, the Secretary of State may determine the licence conditions without regard to any conditions which the court set when passing the shorter sentence: see the 2003 Act s 263(3).

Where a person is serving two or more terms of imprisonment consecutively, none of which is a term to which an intermittent custody order relates, he must serve a period equal to the aggregate of the custodial periods of the sentences which have been passed before being released on licence: s 264(1), (2) (s 264(1) amended by the 2004 Act Sch 6 para 6). Where sentences of less than 12 months and more than 12 months, including the extended sentence, are passed at the same time, or where more than one sentence of more than 12 months is passed, following release the offender is to be on licence for a period equal in length to the aggregate of the lengths of the individual licence periods for each sentence: 2003 Act s 264(3). Where sentences of less than 12 months are to be served consecutively the offender is to be on licence until he has served a term equal in length to the longest licence period for any one of his sentences so that the term to be served is the aggregate of the custodial periods plus the longest licence period: s 264(4), (5). Where the offender has been sentenced to two or more

terms of imprisonment which are to be served consecutively on each other, the sentences were passed on the same occasion or, where they were passed on different occasions, the person has not been released under ss 237-268 at any time during the period beginning with the first and ending with the last of those occasions, and each of the terms is a term to which an intermittent custody order relates, the offender is not to be treated as having served all the required custodial days in relation to any of the terms of imprisonment until he has served the aggregate of all the required custodial days in relation to each of them: s 264A(1), (2) (s 264A added by the 2004 Act Sch 6 para 7). 'The required custodial days', in relation to such a term, means the number of days specified under that the 2003 Act s 183: s 264A(5). After the number of days served by the offender in prison is equal to the aggregate of the required custodial days in relation to each of the terms of imprisonment, the offender is to be on licence until the relevant time and subject to such conditions as are required by ss 237-268 in respect of any of the terms of imprisonment, and none of the terms is to be regarded for any purpose as continuing after the relevant time: s 264A(3). 'The relevant time' means the time when the offender would, but for his release, have served a term equal in length to the aggregate of all the required custodial days in relation to the terms of imprisonment, and the longest of the total licence periods in relation to those terms: 2003 Act s 264A(4). 'Total licence period', in relation to a term of imprisonment to which an intermittent custody order relates, means a period equal in length to the aggregate of all the licence periods as defined by s 183 in relation to that term: 2003 Act s 264A(5).

As to the restriction on consecutive sentences for released prisoners see s 265.

The application of the release on licence provisions contained in the Criminal Justice Act 1991 Pt II (repealed) to offences in respect of which sentence was imposed prior to the coming into force of the Act would only contravene the prohibition of retrospective laws under the European Convention on Human Rights art 7 if a sentence were imposed which constituted a heavier penalty than that which could have been imposed on the defendant under the law in force at the time that his offence was committed: *R (on the application of Uttley) v Secretary of State for the Home Department* [2004] UKHL 38, [2004] 4 All ER 1.

TEXT AND NOTES 5-7--See further 1991 Act s 33(1A)-(1D) (added by Criminal Justice and Immigration Act 2008 s 26(2)). For transitional provisions and savings see 1991 Act Sch 27 paras 8, 9. For prisoners sentenced before amendment by the 2008 Act s 26: see *R (on the application of Poku) v Parole Board* [2009] EWHC 1380 (Admin), [2009] All ER (D) 186 (Jun) (not unlawful not to release prisoner despite having served more than half of his sentence).

NOTE 6--A judge cannot order that a defendant serve a term in prison until a specified release date, but can take into account the early release provisions in the determination of the duration of sentence: *Thompson v Mitchell* [2004] EWCA Civ 1271, (2004) Times, 13 September.

TEXT AND NOTE 9--1991 Act s 33(2) amended: Criminal Justice and Immigration Act 2008 s 26(3). For transitional provisions and savings see Sch 27 para 8.

TEXT AND NOTES 37-40--1991 Act s 45(3) further amended, s 45(3A) added: Criminal Justice and Immigration Act 2008 s 28(3), (4), Sch 28 Pt 2. For transitional provisions and savings see Sch 27 para 10.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/(i) Release/618. Constitution and functions of the Parole Board.

618. Constitution and functions of the Parole Board.

The Parole Board is, by that name, a body corporate¹ and as such is constituted in accordance with Part II² of the Criminal Justice Act 1991³. The Board has the functions conferred by Part II of the Criminal Justice Act 1991 in respect of long term and short term prisoners and by Chapter II of Part II of the Crime (Sentences) Act 1997⁴ in respect of life prisoners⁵.

It is the duty of the Board to advise the Secretary of State⁶ with respect to any matter referred to it by him which is connected with the early release or recall of prisoners⁷. The Board must deal with cases as respects which it makes recommendations⁸ on consideration of any documents given to it by the Secretary of State and any other oral or written information obtained by it⁹. If in any particular case the Board thinks it necessary to interview the person to whom the case relates before reaching a decision, the Board may authorise one of its members to interview him and must consider the report of the interview made by that member¹⁰. The Board must deal with cases as respects which it gives directions¹¹ on consideration of all such evidence as may be adduced before it¹². The Secretary of State may make rules with respect to the proceedings of the Board, including provision authorising cases to be dealt with by a prescribed number of its members or requiring cases to be dealt with at prescribed times¹³. The Secretary of State may also give to the Board directions as to the matters to be taken into account by it in discharging any functions¹⁴; and in giving any such directions the Secretary of State must in particular have regard to (1) the need to protect the public from serious harm from offenders¹⁵; and (2) the desirability of preventing the commission by them of further offences and of securing their rehabilitation¹⁶.

1 Criminal Justice Act 1991 s 32(1) (substituted by the Criminal Justice and Public Order Act 1994 s 149).

2 I.e. the Criminal Justice Act 1991 Pt II (ss 32-51) (as amended).

3 Ibid s 32(1)(a) (s 32(1) as substituted (see note 1 supra); and s 32(1)(a), (b) added by the Crime (Sentences) Act 1997 s 55, Sch 4 para 15(10)).

4 I.e. the Crime (Sentences) Act 1997 Pt II Ch II (ss 28-34) (as amended): see PARA 620 et seq post.

5 Criminal Justice Act 1991 s 32(1)(b) (s 32(1) as substituted (see note 1 supra); and s 32(1)(b) as added (see note 3 supra); and further amended by the Crime and Disorder Act 1998 s 119, Sch 8 para 79(1)). For the meaning of 'life prisoner' for the purposes of the Crime (Sentences) Act 1997 Pt II Ch II (as amended) see PARA 621 note 4 post. For the meaning of 'short term prisoner' and 'long term prisoner' see PARA 617 notes 2, 3 ante.

6 As to the Secretary of State see PARA 505 ante.

7 Criminal Justice Act 1991 s 32(2).

8 I.e. under ibid Pt II (as amended) or the Crime (Sentences) Act 1997 Pt II Ch II (as amended): see the Criminal Justice Act 1991 s 32(3) (amended by the Crime and Disorder Act 1998 Sch 8 para 79(2)).

9 Criminal Justice Act 1991 s 32(3)(a), (b).

10 Ibid s 32(3) (as amended: see note 8 supra). In practice, an interview is conducted by a Board member in all cases which concern long term and mandatory life sentence prisoners. Section 32(3) (as amended) empowers the Board to take measures to obtain its own evidence, whether documentary or oral. Fairness may require the Board, of its own initiative, to consider whether further evidence should be obtained, as where there is a factual dispute and the material before it is inadequate to resolve the issue: *R v Parole Board, ex p Davies* (27 November 1996, unreported), DC. The Criminal Justice Act 1991 s 32(3) (as amended) further confers on the Board a discretion whether to hold an oral hearing and it will be acting illegally if it refuses to consider a

request for such a hearing: *R v Parole Board, ex p Davies* supra. See also *R v Parole Board, ex p Mansell* [1996] COD 327, DC; *R v Parole Board, ex p Downing* [1997] COD 149, DC.

Prisoners detained at Her Majesty's pleasure, whose cases are now considered under the Crime (Sentences) Act 1997 s 28 (as amended) (see PARA 621 post), have a right to an oral hearing in accordance with the Parole Board Rules 1997: see PARAS 621, 626 post.

11 le under the Criminal Justice Act 1991 Pt II (as amended) or the Crime (Sentences) Act 1997 Pt II Ch II (as amended): see the Criminal Justice Act 1991 s 32(4) (amended by the Crime and Disorder Act 1998 Sch 8 para 79(2)).

12 Criminal Justice Act 1991 s 32(4) (as amended: see note 11 supra).

13 Ibid s 32(5). Pursuant to this power, the Secretary of State has made the Parole Board Rules 1997. As to proceedings of the Board see also PARAS 619, 621 note 15 post.

14 Criminal Justice Act 1991 s 32(6) (amended by the Crime and Disorder Act 1998 Sch 8 para 79(2)). The functions referred to are those under the Criminal Justice Act 1991 Pt II (as amended) or the Crime (Sentences) Act 1997 Pt II Ch II (as amended): see the Criminal Justice Act 1991 s 32(6) (as so amended).

15 Ibid s 32(6)(a). Any reference, in relation to an offender convicted of a violent or sexual offence, to protecting the public from serious harm from him is to be construed as a reference to protecting members of the public from death or serious personal injury, whether physical or psychological, occasioned by further such offences committed by him: see s 31(3) (applied by s 51(4)).

16 Ibid s 32(6)(b).

UPDATE

612-622 Release

For provision relating to polygraph conditions for certain offenders released on licence see PARA 622A.

618 Constitution and functions of the Parole Board

TEXT AND NOTES--Replaced. The Parole Board continues to be, by that name, a body corporate and as such is to be constituted in accordance with the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237-268), and to have the functions conferred on it thereby in respect of fixed-term prisoners and by the Crime (Sentences) Act 1997 Pt 2 Ch 2 (ss 28-34) in respect of life prisoners within the meaning of Pt 2 Ch 2: 2003 Act s 239(1). 'Fixed-term prisoner' means (1) a person serving a sentence of imprisonment for a determinate term, or (2) a person serving a determinate sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78) or under the 2003 Act s 228 (power of court to recommend licence conditions for certain prisoners): s 237(1). For the purposes of Pt 12 Ch 6, (a) references to a sentence of imprisonment include such a sentence passed by a service court; (b) references to a sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 include a sentence of detention under the Armed Forces Act 2006 s 209; (c) references to a sentence under the Criminal Justice Act 2003 s 227 include a sentence under that provision passed as a result of the Armed Forces Act 2006 s 220; and (d) references to a sentence under the Criminal Justice Act 2003 s 228 include a sentence under that provision passed as a result of the Armed Forces Act 2006 s 222 (see ARMED FORCES): Criminal Justice Act 2003 s 237(1B) (s 237(1B), (1C) added by the Armed Forces Act 2006 Sch 16 para 219). Nothing in the Criminal Justice Act 2003 s 237(1B) has the effect that s 240 or 265 (provision equivalent to which is made by the Armed Forces Act 2006) or the Criminal Justice Act 2003 s 240A applies to a service court: s 237(1C) (as added) (amended by the Criminal Justice and Immigration Act 2008 s 21(1), (2)). 'Prisoner'

includes a person serving a sentence falling within head (2); and 'prison' includes any place where a person serving such a sentence is liable to be detained: s 237(2). It is the duty of the Board to advise the Secretary of State with respect to any matter referred to it by him which is to do with the early release or recall of prisoners: s 239(2). The Board must, in dealing with cases as respects which it makes recommendations under Pt 12 Ch 6 or under the 1997 Act Pt 2 Ch 2, consider any documents given to it by the Secretary of State, and any other oral or written information obtained by it; and if in any particular case it thinks it necessary to interview the person to whom the case relates before reaching a decision, the Board may authorise one of its members to interview him and must consider the report of the interview made by that member: 2003 Act s 239(3). See *R (on the application of K) v Parole Board* [2006] EWHC 2413 (Admin), [2006] All ER (D) 75 (Oct) (child applicant, not assisted by adult, not told oral hearing possible and not visited by Board, despite being told he would be, before decision made). The Board must deal with cases as respects which it gives directions under the 2003 Act Pt 12 Ch 6 or under the 1997 Act Pt 2 Ch 2 on consideration of all such evidence as may be adduced before it: 2003 Act s 239(4). Without prejudice to s 239(3), (4), the Secretary of State may make rules with respect to the proceedings of the Board, including proceedings authorising cases to be dealt with by a prescribed number of its members or requiring cases to be dealt with at prescribed times: s 239(5). The Parole Board Rules 2004 (amended by SI 2009/408) were made under the 2003 Act s 239(5). The Secretary of State may also give to the Board directions as to the matters to be taken into account by it in discharging any functions under Pt 12 Ch 6 or under the 1997 Act Pt 2 Ch 2; and in giving any such directions the Secretary of State must have regard to the need to protect the public from serious harm from offenders, and the desirability of preventing the commission by them of further offences and of securing their rehabilitation: 2003 Act s 239(6). Directions the Secretary of State gives to the Board relating to its judicial functions may provide it with guidance as to matters to be taken into account in order to assist it in reaching a structured decision, but must not conflict with or otherwise usurp the Board's responsibility to determine the question whether to direct the release of a prisoner in accordance with the law: *R (on the application of Girling) v Parole Board* [2006] EWCA Civ 1779, [2007] 2 All ER 688 (decided under 1991 Act s 36(2)). See also *R (on the application of Brooke) v Parole Board*; *R (on the application of Murphy) v Parole Board* [2008] EWCA Civ 29, [2008] 3 All ER 289 (Board's independence from executive not sufficiently demonstrated). As to membership, proceedings etc of the Board see the 2003 Act s 239(7), Sch 19.

Where an initial sentence has been substituted or varied on appeal, the Parole Board must take into account the new judgment, as well as any fresh sentencing reports and other relevant material before making its assessment: *R (on the application of Martin) v Parole Board* [2003] EWHC 1512 (Admin), [2003] All ER (D) 89 (May).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/(i) Release/619. Procedural matters relating to the Parole Board.

619. Procedural matters relating to the Parole Board.

The Parole Board is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Board's property is not to be regarded as property of, or held on behalf of, the Crown¹. It is within the capacity of the Board as a statutory corporation to do such things and enter into such transactions as are incidental to or conducive to the discharge of its functions².

The Board consists of a chairman and not less than four other members appointed by the Secretary of State³. The Board must include among its members:

- 140 (1) a person who holds or has held judicial office⁴;
- 141 (2) a registered medical practitioner who is a psychiatrist⁵;
- 142 (3) a person appearing to the Secretary of State to have knowledge and experience of the supervision or after-care of discharged prisoners⁶; and
- 143 (4) a person appearing to the Secretary of State to have made a study of the causes of delinquency or the treatment of offenders⁷.

A member of the Board holds and vacates office in accordance with the terms of his appointment⁸ and may resign his office by notice in writing addressed to the Secretary of State⁹. A person who ceases to hold office as a member of the Board is eligible for re-appointment¹⁰.

The Board may pay to each member such remuneration and allowances as the Secretary of State may determine¹¹ and the Board may also pay or make provision for paying to or in respect of any member such sums by way of pension, allowances or gratuities as the Secretary of State may determine¹².

Subject to the power of the Secretary of State to make rules with respect to proceedings of the Board¹³, the arrangements relating to its meetings are such as the Board may determine¹⁴. The arrangements may provide for the discharge, under the general direction of the Board, of any of the Board's functions by a committee or by one or more of the members or employees of the Board¹⁵. The validity of the proceedings of the Board is not affected by any vacancy among the members or by any defect in the appointment of a member¹⁶.

The Board may appoint employees, whose number, remuneration and other conditions of service are determined by the Board¹⁷ subject to the approval of the Secretary of State given with the consent of the Treasury¹⁸.

The Secretary of State must pay to the Parole Board:

- 144 (a) any expenses incurred or to be incurred in relation to payments to members and staff¹⁹ by the Board²⁰; and
- 145 (b) with the consent of the Treasury, such sums as he thinks fit for enabling the Board to meet other expenses²¹.

Any sums required by the Secretary of State for making such payments must be paid out of money provided by Parliament²².

The application of the seal of the Board must be authenticated by the signature of the chairman or some other person authorised for the purpose²³.

Any document purporting to be an instrument issued by the Board and to be duly executed under the seal of the Board or to be signed on behalf of the Board must be received in evidence and is to be deemed to be such an instrument unless the contrary is shown²⁴.

It is the duty of the Board:

- 146 (i) to keep proper accounts and proper records in relation to the accounts²⁵;
- 147 (ii) to prepare in respect of each financial year²⁶ a statement of accounts in such form as the Secretary of State may direct with the approval of the Treasury²⁷; and
- 148 (iii) to send copies of each such statement to the Secretary of State and the Comptroller and Auditor General not later than 31 August next following the end of the financial year to which the statement relates²⁸.

The Comptroller and Auditor General must examine, certify and report on each statement of accounts sent to him by the Board and must lay a copy of every such statement and of his report before each House of Parliament²⁹.

The Parole Board must as soon as practicable after the end of each financial year make to the Secretary of State a report on the performance of its functions during the year; and the Secretary of State must lay a copy of the report before Parliament³⁰.

1 Criminal Justice Act 1991 s 33(7), Sch 5 para 1(1) (Sch 5 substituted by the Criminal Justice and Public Order Act 1994 s 168(2), Sch 10 para 70).

2 See the Criminal Justice Act 1991 Sch 5 para 1(2) (Sch 5 as substituted (see note 1 supra); and Sch 5 para 1(2) amended by the Crime Sentences Act 1998 s 119, Sch 8 para 97). As to the functions of the Board see PARA 618 ante.

3 Criminal Justice Act 1991 Sch 5 para 2(1) (Sch 5 as substituted: see note 1 supra). As to the Secretary of State see PARA 505 ante.

4 Ibid Sch 5 para 2(2)(a) (as substituted: see note 1 supra).

5 Ibid Sch 5 para 2(2)(b) (as substituted: see note 1 supra).

6 Ibid Sch 5 para 2(2)(c) (as substituted: see note 1 supra).

7 Ibid Sch 5 para 2(2)(d) (as substituted: see note 1 supra).

8 Ibid Sch 5 para 2(3)(a) (as substituted: see note 1 supra).

9 Ibid Sch 5 para 2(3)(b) (as substituted: see note 1 supra).

10 Ibid Sch 5 para 2(3) (as substituted: see note 1 supra).

11 Ibid Sch 5 para 3(1) (as substituted: see note 1 supra).

12 Ibid Sch 5 para 3(2) (as substituted: see note 1 supra). If a person ceases to be a member otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances that make it right that he should receive compensation, the Secretary of State may direct the Board to make to that person a payment of such amount as the Secretary of State may determine: Sch 5 para 3(3) (as so substituted). Such a determination or direction of the Secretary of State requires the approval of the Treasury: Sch 5 para 3(4) (as so substituted).

13 See ibid s 32(5); and PARA 618 ante. See also PARA 621 note 15 post.

14 Ibid Sch 5 para 4(1) (as substituted: see note 1 supra).

15 Ibid Sch 5 para 4(2) (as substituted: see note 1 supra).

16 Ibid Sch 5 para 4(3) (as substituted: see note 1 supra).

17 See ibid Sch 5 para 5(1), (2) (as substituted: see note 1 supra).

18 See ibid Sch 5 para 5(3) (as substituted: see note 1 supra). The Employers' Liability (Compulsory Insurance) Act 1969 (see EMPLOYMENT vol 39 (2009) PARA 40 et seq) does not require insurance to be effected by the Board: see the Criminal Justice Act 1991 Sch 5 para 5(4) (as so substituted). The Board must pay to the Treasury, at such times as the Treasury may direct, such sums as the Treasury may determine in respect of the increase attributable in the sums payable under the Superannuation Act 1972 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS) out of money provided by Parliament: Criminal Justice Act 1991 Sch 5 para 6(2) (as so substituted).

19 Ie by virtue of ibid Sch 5 para 3 (see the text and notes 11-12 supra) or Sch 5 para 5 (see the text and notes 17-18 supra): see Sch 5 para 7(1)(a) (as substituted: see note 1 supra).

20 Ibid Sch 5 para 7(1)(a) (as substituted: see note 1 supra).

21 Ibid Sch 5 para 7(1)(b) (as substituted: see note 1 supra).

22 Ibid Sch 5 para 7(2) (as substituted: see note 1 supra).

23 Ibid Sch 5 para 8 (as substituted: see note 1 supra).

24 Ibid Sch 5 para 9 (as substituted: see note 1 supra).

25 Ibid Sch 5 para 10(1)(a) (as substituted: see note 1 supra).

26 'Financial year' means the period beginning with the date on which the Board is incorporated and ending with the next following 31 March, and each successive period of 12 months: ibid Sch 5 para 10(3) (as substituted: see note 1 supra).

27 Ibid Sch 5 para 10(1)(b) (as substituted: see note 1 supra).

28 Ibid Sch 5 para 10(1)(c) (as substituted: see note 1 supra). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 724 et seq.

29 Ibid Sch 5 para 10(2) (as substituted: see note 1 supra).

30 Ibid Sch 5 para 11 (as substituted: see note 1 supra).

UPDATE

612-622 Release

For provision relating to polygraph conditions for certain offenders released on licence see PARA 622A.

619 Procedural matters relating to the Parole Board

TEXT AND NOTES--Replaced. See the Criminal Justice Act 2003 s 239, Sch 19; and PARA 618.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/(i) Release/620. Discretionary release of determinate sentence prisoners.

620. Discretionary release of determinate sentence prisoners.

After a long term prisoner¹, who is serving a sentence of imprisonment for a term of less than 15 years, has served one-half of his sentence², the Secretary of State³ must, if recommended to do so by the Parole Board⁴, release him on licence⁵. After a long term prisoner, who is serving 15 years or more, has served one-half of his sentence, the Secretary of State may, if recommended to do so by the Parole Board, release him on licence⁶.

In the case of a long term prisoner who has served one-half of his sentence and is liable to removal from the United Kingdom, the Secretary of State may release him on licence without first obtaining a recommendation from the Parole Board⁷.

1 For the meaning of 'long term prisoner' see PARA 617 note 3 ante.

2 As to the matters to be taken into account in calculating release dates and the proper method of making such calculations see PARA 617 note 4 ante. In relation to a prisoner serving an extended sentence under the Crime and Disorder Act 1998 s 58 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 76), for the purpose of calculating when he has served half his sentence, only the custodial term is taken into account: see PARA 617 note 19 ante. A prisoner sentenced before the Criminal Justice Act 1991 came into force (ie before 1 October 1992) is eligible to apply for parole as soon as he has served one-third of his sentence, or six months, whichever is the longer: see note 5 infra.

3 As to the Secretary of State see PARA 505 ante.

4 As to the Parole Board see PARAS 618-619 ante. A prisoner's first parole review commences 26 weeks before the date on which he has served half his sentence (or, in the case of existing prisoners, one third of his sentence: see note 5 infra). Such a date is known as the parole eligibility date. Further reviews commence 26 weeks before the anniversary of the parole eligibility date. Parole reviews are initiated upon the completion by the prisoner of an application form for release on licence. It is, therefore, a matter for the prisoner whether he seeks early discretionary release. The current policy secures that all prisoners are interviewed by a member of the Board, pursuant to the discretion to conduct such interviews conferred by the Criminal Justice Act 1991 s 32(3) (as amended) (see PARA 618 ante). In practice the documentation including reports which will be submitted to the Board is disclosed to the prisoner before being sent to the interviewing member, save where the governor has ordered documentation to be withheld (1) in the interests of national security; (2) for the prevention of disorder or crime; (3) for the protection of information received in confidence from a third party, or other information which may put a third party at risk; or (4) if, on medical or psychiatric grounds, it is felt necessary to withhold information where the mental or physical health of the prisoner could be impaired. Whenever it is decided to withhold a report or other documentation the prisoner must be given written notice. The interview is conducted in private. The prisoner is entitled to have a copy of the dossier with him during the interview. Following the interview the interviewing member compiles a report which is then disclosed to the prisoner for him to comment upon. These comments, together with any other representations the prisoner may wish to make, are submitted to the Board for its consideration. Determinate sentence prisoners do not have a right to an oral hearing, though the Board has a discretion whether to conduct such a hearing in every case and should consider any request for such a hearing (see PARA 618 ante), but the Board's consideration of cases which are referred to it is normally conducted by way of a paper review. See Prison Service Order 6000, PARAS 4.14-4.15.5.

As to the matters to be considered in deciding whether or not to recommend release on licence see Directions made in 1993 (see the Prison Service Order 6000, Chapter 4 Appendix A, p 14). See also the Training Guidance issued by the Secretary of State: Prison Service Order 6000, Appendix A. As to the power to make directions see the Criminal Justice Act 1991 s 32(6) (as amended); and PARA 618 ante.

The Board is required to concentrate primarily on the degree to which a prisoner can demonstrate that there has been a reduction in risk to the public. For prisoners who deny their guilt this can present particular difficulties. In relation to such prisoners the Board must approach them on the basis that the prisoners have committed the offences of which they have been convicted: *R v Secretary of State for the Home Department, ex p Lillycrop* (1996) Times, 13 December, DC. The Board must not refuse to recommend parole simply because the prisoner is denying his guilt: *R v Secretary of State for the Home Department, ex p Zulfikar* (1995) Times,

26 July, DC. However, a denial of guilt coupled with a refusal to address offending behaviour is a factor to which the Board must have regard in assessing risk to the public of further offending. In cases where the nature of the offence or the pattern of offending suggests that there is a significant risk of further offences being committed, and because of the prisoner's denial no offence-related work has been undertaken, then, unless he has demonstrated by some other means that the risk of re-offending has reduced, the Board is unlikely to recommend release. See also *R v Secretary of State for the Home Department, ex p Zulfikar (No 2)* (1 May 1996, unreported), DC; *R v Secretary of State for the Home Department, ex p Fenton-Palmer* [1996] COD 330, DC.

Although it had been held that the general duty of fairness owed by the Board to prisoners did not include a duty to give reasons for adverse decisions (see *Payne v Lord Harris of Greenwich* [1981] 2 All ER 842, [1981] 1 WLR 754, CA), the Secretary of State has since 1992 operated a policy requiring reasons to be given: see Prison Service Circular Instruction 85/1992, now contained in Prison Service Order 6000, PARA 4.18. See *R v Parole Board, ex p Wilson* [1992] QB 740, [1992] 2 All ER 576, CA (parole reviews in relation to discretionary life sentence prisoners); *R v Secretary of State for the Home Department, ex p Creamer and Scholey* [1993] COD 162, DC (mandatory life sentence prisoner); *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531, sub nom *Doody v Secretary of State for the Home Department* [1993] 3 All ER 92, HL (in which *Payne v Lord Harris of Greenwich* supra was finally overruled). It has more recently been said that the demands of natural justice and fairness require disclosure: see *R v Secretary of State for the Home Department, ex p Lillycrop* supra per Butterfield J. In giving reasons, the Board should provide a succinct and accurate summary of the reasons leading to the decision; the Board need not create an elaborate formal exegesis or detailed analysis of the facts that have been considered or the application of those facts to the relevant law, but the reasons should achieve their object of telling the prisoner in broad terms why parole has not been recommended, bearing in mind that in most cases the prisoner will himself have been provided with the documentation available to the Board: *R v Secretary of State for the Home Department, ex p Lillycrop* supra. Where the Board finds itself unable to follow the unanimous recommendation of report writers, it should explain why, in language sufficiently clear and terms sufficiently full to ensure that those report writers properly understand the basis for the difference between them; and such reasons should, at least, indicate the Board's essential thinking: *R v Parole Board, ex p Evans* (2 November 1994, unreported), DC (a case concerning prisoners serving mandatory life sentences, but the reasoning would appear to be equally applicable to determinate sentence prisoners).

Since there are no internal appellate mechanisms, it follows that a refusal of parole can only be challenged by way of judicial review. Affidavit evidence which the Board seeks to place before the court in such proceedings will only be permitted to the extent that it elucidates or, exceptionally, corrects or adds to the reasons originally communicated to the prisoner: *R v Secretary of State for the Home Department, ex p Lillycrop* supra. In cases where the object of that evidence is to correct or add to those original reasons, the court will exercise caution to prevent a decision being upheld on grounds which are in reality a subsequent rationalisation of a decision that had not been properly considered at the time: *R v Secretary of State for the Home Department, ex p Lillycrop* supra. See also *R v Parole Board, ex p Gittens* (1994) Times, 3 February, DC.

5 See the Criminal Justice Act 1991 ss 35(1), 50(1), (2), (5) (s 50(1) amended by the Criminal Justice and Public Order Act 1994 s 150); and the Parole Board (Transfer of Functions) Order 1998, SI 1998/3218. Any conditions attached to or inserted in the licence must be in accordance with the recommendation of the Parole Board: see the Criminal Justice Act 1991 s 37(5) (substituted by the Crime and Disorder Act 1998 s 119, Sch 8 para 83(6)); and the Criminal Justice Act 1991 s 50(3) (substituted by the Crime and Disorder Act 1998 Sch 8 para 91).

The Parole Board (Transfer of Functions) Order 1998, SI 1998/3218, which effects the distinction between sentences of less than 15 years and sentences of 15 years or more, only applies to such prisoners who were sentenced after the Criminal Justice Act 1991 came into force (ie 1 October 1992). In relation to prisoners who were sentenced before that date ('existing prisoners'), and who are serving sentences of more than 12 months, eligibility for parole arises upon their serving one-third of their sentence or six months, whichever is the longer: see s 101(1), Sch 12 para 8(1), (6)(a). As the Parole Board (Transfer of Functions) Order 1998, SI 1998/3218, does not apply to them, their release is dependent upon the Secretary of State accepting a recommendation for release by the Board: see the Criminal Justice Act 1991 s 35 (as amended). The transitional provisions contained in Sch 12 (as amended) seek to ensure that prisoners sentenced before the Act came into force continue to be released in accordance with the scheme in operation at the time of their sentence.

Section s 35 (as amended) does not apply to a person who was committed to prison or detained under the Criminal Justice Act 1982 s 9(1)(a) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS) in default of payment of a sum adjudged to be paid by a conviction, or for contempt of court or any kindred offence: see the Criminal Justice Act 1991 s 45(1) (amended by the Crime and Disorder Act 1998 Sch 8 para 88). As to the release and recall of such prisoners see PARA 617 ante.

As to the manner in which Parole Board reviews are conducted see note 4 supra. As to the supervision of long term prisoners see PARA 627 post. As to the recall of long term prisoners see PARA 623 post. As to the release of long term prisoners who are liable to removal from the United Kingdom see note 7 infra.

6 Criminal Justice Act 1991 s 35(1). As to the reference to sentences of 15 years or more, and as to the date of parole eligibility for existing prisoners see note 5 supra. As to the manner in which Parole Board reviews are

conducted see note 4 supra. As to the supervision of long term prisoners see PARA 627 post. As to the recall of long term prisoners see PARA 623 post.

7 See *ibid* s 46(1), modifying s 35(1). A person is liable to removal from the United Kingdom for these purposes if (1) he is liable to deportation under the Immigration Act 1971 s 3(5) (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 160) and has been notified of a decision to make a deportation order against him; (2) he is liable to deportation under s 3(6) (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 160); (3) he has been notified of a decision to refuse him leave to enter the United Kingdom; or (4) he is an illegal entrant within the meaning of s 33(1) (see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 151); Criminal Justice Act 1991 s 46(3). Section 46 (as amended) does not apply to a prisoner who is sentenced to an extended sentence in respect of a sexual or violent offence: see s 44(6) (added by the Crime and Disorder Act s 59). As to extended sentence prisoners see PARA 617 ante.

UPDATE

612-622 Release

For provision relating to polygraph conditions for certain offenders released on licence see PARA 622A.

620 Discretionary release of determinate sentence prisoners

TEXT AND NOTES 4-7--1991 Act Pt II (ss 32-51) repealed: Criminal Justice Act 2003 s 303(a), Sch 37 Pt 7.

When a determinate sentence is imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 80(2)(b) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 34), the prisoner has no right to have the sentence reviewed on a regular basis, the judicial decision as to release is final: *R (on the application of Giles) v Parole Board* [2003] UKHL 42, [2003] 4 All ER 429.

NOTE 4--An unjustifiably long delay in reviewing the detention after the half-way point is inconsistent with the European Convention on Human Rights art 5(4): *R (on the application of Johnson) v Secretary of State for the Home Department* [2007] EWCA Civ 427, [2007] 3 All ER 532.

TEXT AND NOTES 5-7--See further 1991 Act s 35(1A) (added by Criminal Justice and Immigration Act 2008 s 26(4)). For transitional provisions and savings see Sch 27 para 8.

1991 Act s 50(2) amended: Criminal Justice and Immigration Act 2008 s 27, Sch 28 Pt 2.

NOTE 6--The Secretary of State's power under the 1991 Act s 35(1) (repealed) to reject the Parole Board's recommendation that a prisoner be released on licence does not contravene the prisoner's rights under the European Convention on Human Rights: *R (on the application of Clift) v Secretary of State for the Home Department*; *R (on the application of Hindawi) v Secretary of State for the Home Department* [2006] UKHL 54, [2007] 2 All ER 1; *R (on the application of Black) v Secretary of State for Justice* [2009] UKHL 1, [2009] 1 AC 949, [2009] 4 All ER 1.

NOTE 7--See *R (on the application of Clift) v Secretary of State for the Home Department* NOTE 6 (refusal to allow prisoners, liable to be removed under deportation orders, opportunity to have continued detention reviewed by Parole Board was discriminatory). See also *R (on the application of Christian) v Secretary of State for the Home Department* [2006] All ER (D) 35 (Jul).

For the purposes of the 2003 Act Pt 12 Ch 6 (ss 237-268) a person is liable to removal from the United Kingdom if (1) he is liable to deportation under the Immigration Act

1971 s 3(5) and has been notified of a decision to make a deportation order against him, (2) he is liable to deportation under s 3(6), (3) he has been notified of a decision to refuse him leave to enter the United Kingdom, (4) he is an illegal entrant within the meaning of s 33(1), or (5) he is liable to removal under the Immigration and Asylum Act 1999 s 10: Criminal Justice Act 2003 s 259. As to the early removal of prisoners liable to removal from the United Kingdom, see s 260 (amended by Criminal Justice and Immigration Act 2008 Sch 28 Pt 2; SI 2008/978).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/(i) Release/621. Duty to release certain life sentence prisoners and prisoners detained at Her Majesty's pleasure.

621. Duty to release certain life sentence prisoners and prisoners detained at Her Majesty's pleasure.

Life sentence prisoners whose sentences have been imposed in respect of an offence the sentence for which is not fixed by law and offenders who have been sentenced to detention at Her Majesty's pleasure following conviction for murder are subject to special provisions affecting their release¹, whereby the power to direct release is vested in the Parole Board² rather than the Secretary of State³.

These provisions apply to a life prisoner⁴ if certain conditions are fulfilled⁵ or if he was under 18 at the time when he committed the offence for which his sentence was imposed⁶. The conditions mentioned are:

- 149 (1) that the prisoner's sentence was imposed for an offence the sentence for which is not fixed by law⁷; and
- 150 (2) that the court⁸ by which he was sentenced for that offence ordered that this provision should apply to him as soon as he had served a part of his sentence specified in the order⁹.

Where in the case of a life prisoner to whom this provision applies the conditions mentioned in heads (1) and (2) above are not fulfilled, the Secretary of State must direct that this provision is to apply to him as soon as he has served a part of his sentence specified in the direction¹⁰.

As soon as a life prisoner to whom these provisions apply has served the part of his sentence specified in the order or direction ('the relevant part')¹¹ and the Board has directed his release under these provisions¹², it is the duty of the Secretary of State to release him on licence¹³.

The Board must not give such a direction unless the Secretary of State has referred the prisoner's case to the Board¹⁴ and the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined¹⁵.

A life prisoner to whom these provisions apply may require the Secretary of State to refer his case to the Board at any time:

- 151 (a) after he has served the relevant part of his sentence¹⁶; and
- 152 (b) where there has been a previous reference¹⁷ of his case to the Board, after the end of the period of two years beginning with the disposal of that reference¹⁸; and
- 153 (c) where he is also serving a sentence of imprisonment or detention for a term, after he has served one-half of that sentence¹⁹.

Detailed provision has been made regulating Parole Board reviews conducted under the provisions described above and those relating to recall reviews²⁰.

The chairman²¹ must appoint three members of the Board to form a panel for the purposes of conducting proceedings in relation to a prisoner's case²². One of those members must hold judicial office and must act as chairman of the panel²³. The parties to the hearing are the prisoner and Secretary of State²⁴. Each party may be represented by a person authorised by him²⁵, but there are categories of persons ineligible to act as a representative before the

Board²⁶. The Board may appoint a representative with the prisoner's agreement, where he does not authorise a person to act on his behalf²⁷. Additionally, a party may apply to be accompanied by some other person or persons²⁸. The Board must list the case for hearing and notify the parties as soon as practicable thereafter²⁹.

Within eight weeks of a case being listed, the Secretary of State must serve on the Board, the prisoner, or his representative specified information and reports³⁰. However, the Secretary of State may withhold information or documentation from the prisoner where he considers that its disclosure would adversely affect the health or welfare of the prisoner or others³¹.

Prisoners are entitled to make written representations. If they do so these must be served on the Board and Secretary of State within 15 weeks of the case being listed³². Any other documentary evidence which the prisoner wishes to adduce must be served at least 14 days before the hearing³³. Within 12 weeks of the listing of a case each party which wishes to call witnesses must apply in writing to the Board for permission to do so³⁴. The chairman of the panel must decide if the witnesses may be called, and must give written reasons for any refusal³⁵.

The chairman has power to issue directions either of his own motion, or on application, in respect of (i) the timetable of the proceedings; (ii) the varying of the time within which or by which an act is required to be done; (iii) the service of documents; (iv) the withholding of documents from the prisoner; and (v) the submission of evidence. He is required to give active consideration to whether any such directions should be given³⁶. The chairman may conduct a preliminary hearing at which he sits alone, and the parties' representatives can appear, and which the prisoner can attend only if he is unrepresented; such a hearing must be held in private and information about the proceedings including the names of any persons concerned may not be made public³⁷.

An oral hearing will be held unless the parties agree otherwise, and the prisoner must notify the Board and the Secretary of State, within five weeks of the case being listed, whether he wishes to attend³⁸. Hearings must take place in the prison where the prisoner is detained and must be held in private³⁹. The panel must conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; so far as appears appropriate, it must seek to avoid formality in the proceedings⁴⁰. The parties are entitled to be appear and be heard and to take such part in the proceedings as appear to the panel to be proper: they may hear each other's evidence, put questions to each other, call any witnesses whom the Board has authorised to give evidence and put questions to any witnesses or other persons appearing before the panel⁴¹. The Board may admit evidence even though it would not be admissible in a court of law, but no person may be compelled to give evidence or produce a document which he could not be compelled to give or produce on the trial of an action⁴². Where any evidence is heard in relation to documents directed to be withheld from the prisoner, the chairman may require the prisoner, or any witness appearing for him to leave while that evidence is given⁴³. After all the evidence has been given the prisoner has a further opportunity to address the panel⁴⁴. The panel may adjourn a hearing at any time, for the purpose of obtaining further information or for such other purposes as it thinks appropriate⁴⁵.

The panel's decision is that of the majority⁴⁶.

1 See the Crime Sentences Act 1997 s 28 (as amended). That section replaced the Criminal Justice Act 1991 s 34, which was introduced following the decision of the European Court of Human Rights in *Thynne, Wilson and Gunnell v United Kingdom* (1990) 13 EHRR 666, ECtHR. The applicants were all discretionary life sentence prisoners (ie convicted of offences for which the sentence was not fixed by law). At the time the power to direct their release was conferred on the Secretary of State, and they were treated for all purposes relating to release in the same manner as mandatory life sentence prisoners. The Court held that the rationale for the discretionary life sentence differed to that of the mandatory life sentence, in that the former comprised two discrete components, namely a punitive element to mark the requirements of retribution and deterrence, and thereafter, once the punitive period had been served, ongoing detention justified for preventative or security

purposes. The pronouncement of sentence was sufficient to authorise, once and for all, a discretionary life sentence prisoner's detention throughout the punitive period, but thereafter the justification for ongoing detention depended upon a criterion of dangerousness that was susceptible to change over time. The pronouncement of sentence did not authorise, once and for all, detention in respect of the security phase. Once that phase was entered the question whether the prisoner remained dangerous and thus whether his ongoing detention remained lawful, fell to be determined again. In accordance with the European Convention on Human Rights and Fundamental Freedoms (1950) Art 5(4), the question of the lawfulness of detention at that stage is to be determined speedily by a court and the prisoner's release ordered if it is not lawful. Since the quality of dangerousness is susceptible to change over time, the Court further reasoned that the lawfulness of detention was to be determined by a court at regular intervals during the preventative phase. The Criminal Justice Act 1991 gave effect in domestic law to that judgment in relation to discretionary life sentence prisoners. In relation to any prisoner sentenced to a discretionary life sentence after the Act came into force on 1 October 1992, the sentencing court was required to consider whether or not to specify a period before which the prisoner's case for release could not be considered by the Parole Board. The decision whether or not to specify a period turned upon whether the discretionary life sentence was imposed solely on punitive grounds, in which case the provisions relating to the treatment of such prisoners in the preventative phase would not apply. Where the court considered that the offence was so grave as to require life-long punishment, no period would be specified. The result would be that the prisoner would be treated as a mandatory life sentence prisoner for the purposes of the release provisions contained in Pt II: see s 35 (as amended). As to the release of mandatory life sentences prisoners see PARA 622 post. Where the court decided to specify a period it was required to do so taking account of (1) the seriousness of the offence or the combination of the offence and other offences associated with it, ie the notional determinate sentence that would have been passed had the offender's dangerousness not required the imposition of a life sentence (s 34(2)(a)); and (2) the provisions of the Act relating to the automatic and discretionary release of long term prisoners (s 34(2)(b)). The obligation to take account of the release provisions relating to long term prisoners was a requirement to specify a period somewhere between the half way and two-thirds point of the notional determinate sentence. The object was to ensure that a discretionary life sentence prisoner was in no worse a position than his fixed term counterpart in respect of the time at which the Parole Board might consider his case for release. In the case of young offenders the specified period should, unless there are exceptional reasons to do otherwise, be at the half way point of the notional determinate sentence and in relation to adult discretionary life sentence prisoners it should ordinarily be at the half way point: *R v Secretary of State for the Home Department, ex p Furber* [1998] 1 All ER 23, [1998] Cr App Rep (S) 208; *R v Marklew and Lambert* [1998] 2 All ER 939, [1999] 1 WLR 485, CA.

In relation to a discretionary life sentence prisoner sentenced before the Criminal Justice Act 1991 came into force, transitional provisions empower the Secretary of State administratively to certify the period that the court would have specified had the provisions of s 34 been in force at the time the prisoner was sentenced: Sch 12 para 9(1). The Secretary of State cannot certify the period which in his subjective judgment is appropriate. Rather he must put himself in the shoes of the sentencing court and so identify a notional determinate sentence according to the sentencing practice and guidelines applicable at the time of sentence: *R v Secretary of State for the Home Department, ex p McCartney* (1994) Times, 25 May, [1994] COD 528, CA. Where the period is so manifestly excessive as to be irrational, the decision is liable to be quashed in proceedings for judicial review: see *R v Secretary of State for the Home Department, ex p McCartney* supra; *R v Secretary of State for the Home Department, ex p Furber* supra; *R v Secretary of State for the Home Department, ex p Chapman* (1994) Times, 25 October; *R v Secretary of State for the Home Department, ex p Dowd* (24 November 1994, unreported), DC.

The introduction of the Crime Sentences Act 1997 s 28 followed the decision of the European Court of Human Rights in *Singh and Hussain v United Kingdom* (1996) 22 EHRR 1, ECtHR. The sentence of detention at Her Majesty's pleasure, imposed in respect of offenders convicted of murder committed when they were aged 17 or under, was similarly held to comprise both a punitive and preventative component, so that when the sentence entered the preventative phase, it too, attracted the guarantees of the European Convention on Human Rights and Fundamental Freedoms (1950) Art 5(4), entitling the detainee to have the lawfulness of ongoing detention determined speedily and reviewed at regular intervals by a court.

The final group of offenders which fall within the release provisions of the Crime (Sentences) Act 1997 s 28 (as amended) are those who are sentenced to automatic life sentences in accordance with s 2: see s 2(4).

As to the release of mandatory life sentences prisoners see PARA 622 post.

2 As to the Parole Board see PARAS 618-619 ante.

3 As to the Secretary of State see PARA 505 ante.

4 'Life prisoner' means a person serving one or more life sentences (Crime (Sentences) Act 1997 s 34(1)), but:

- 49 (1) a person serving two or more such sentences must not be treated as a life prisoner to whom s 28 (as amended) applies unless the requirements of s 28(1) are satisfied as respects each of those sentences (s 34(1)(a)); and

- 50 (2) the provisions of s 28(5), (7) do not apply in relation to such a person until after he has served the relevant part of each of those sentences (s 34(1)(b)).

'Life sentence' means any of the following imposed for an offence, whether committed before or after the commencement of Pt II Ch II (ss 28-34) (as amended), namely:

- 51 (a) a sentence of imprisonment for life (s 34(2)(a));
- 52 (b) a sentence of detention during Her Majesty's pleasure or for life under the Children and Young Persons Act 1933 s 53 (as amended) (Crime (Sentences) Act 1997 s 34(2)(b)); and
- 53 (c) a sentence of custody for life under the Criminal Justice Act 1982 s 8 (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS) (Crime (Sentences) Act 1997 s 34(2)(c)).

The reference to the Children and Young Persons Act 1933 s 53 (as amended) includes a reference to the Army Act 1955 s 71A(3), (4) (as added), the Air Force Act 1955 s 71A(3), (4) (as added) and the Naval Discipline Act 1957 s 43A(3), (4) (as added) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 669): Crime (Sentences) Act 1997 s 34(3)(a). The reference to the Criminal Justice Act 1982 s 8 includes a reference to the Army Act 1955 s 71A(1A) (as added and substituted), (1B) (as added), the Air Force Act 1955 s 71A(1A) (as added and substituted), (1B) (as added) and the Naval Discipline Act 1957 s 43A(1A) (as added and substituted), (1B) (as added) (see SENTENCING AND DISPOSITION OF OFFENDERS): Crime (Sentences) Act 1997 s 34(3)(b).

5 Ibid s 28(1)(a).

6 Ibid s 28(1)(b).

7 Ibid s 28(2)(a). Automatic life sentences imposed under s 2 are not regarded as an offence the sentence for which is fixed by law: see s 2(4). Thus the provisions of s 28 (as amended) apply to such prisoners.

8 'Court' includes a court-martial: ibid s 34(3).

9 Ibid s 28(2)(b). A part of a sentence specified in an order must be such part as the court considers appropriate taking into account:

- 54 (1) the seriousness of the offence, or the combination of the offence and other offences associated with it (s 28(3)(a)); and
- 55 (2) the effect of any direction which it would have given under s 9 (as amended) if it had sentenced him to a term of imprisonment (s 28(3)(b)); and
- 56 (3) the provisions of s 28 (as amended) as compared with those of the Criminal Justice Act 1991 ss 33(2) (as amended), 35(1) (see PARAS 617, 620 ante) (Crime (Sentences) Act 1997 s 28(3)(c) (added by the Crime and Disorder Act 1998 s 119, Sch 8 para 130(1))).

An offence is associated with another for the purposes of the Crime (Sentences) Act 1997 s 28 (as amended) if it is so associated for the purposes of the Criminal Justice Act 1991 Pt I (ss 1-31) (as amended): Crime (Sentences) Act 1997 s 28(9).

The court is not required to specify a period, but it should only refuse to do so where it considers that the circumstances of the offence are so grave as to warrant life-long detention on punitive grounds: *Practice Direction (Crime: Life Sentences)* [1993] 1 All ER 747, [1993] 1 WLR 223. If no period is specified, the prisoner's release is at the discretion of the Secretary of State: see the Criminal Justice Act 1991 s 35 (as amended); and PARA 622 post. See also note 1 supra.

10 Crime (Sentences) Act 1997 s 28(4). This provision deals with offenders sentenced to detention at Her Majesty's pleasure in respect of a conviction for murder. The court is not empowered to determine the punitive period of a detainee's sentence. That period, 'the tariff', is determined by the Secretary of State. The procedure for setting the tariff is the same as applies to mandatory life sentence prisoners: see PARA 622 post. However, the principles that the Secretary of State must apply differ substantially: see *R v Secretary of State for the Home Department, ex p Thompson and Venables* [1998] AC 407, [1997] 3 All ER 97, HL. The majority viewed the tariff fixing exercise as comparable to a judicial sentencing exercise requiring the Secretary of State to act in accordance with the principles which a sentencing court would apply. The Secretary of State must take a different approach to that applicable to adult mandatory life sentence prisoners; he must balance the requirements of retribution and deterrence against the welfare of the offender. A minority (Lord Browne-Wilkinson and Lord Hope of Craighead) considered that the Secretary of State is also required to keep the tariff under review, making provision for downward revision in the light of a detainee's progress in custody. See also policy statement of Secretary of State for the Home Department, issued on 10 November 1997, announcing in the light of the House of Lords' judgment that tariffs will continue to be fixed at the outset. As with mandatory life sentence prisoners, the Secretary of State continues to assert the power to set the tariff higher than the

judicial recommendation by reference to his perception of the need to 'maintain public confidence'. The tariff will be reviewed at the half way point of the period initially fixed but the power to reduce it at that stage will not be exercised lightly. The more serious the circumstances of the offence, the higher will be the justification required to reduce it in the light of the detainee's progress.

Note that the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Arts 5(4), 6(1) (see PARA 504 ante) require the determination of the sentence to be made by a court. As to the management of discretionary life sentence prisoners and detainees at Her Majesty's pleasure see Prison Service Order 4700, 'The Lifer Manual'.

11 Crime (Sentences) Act 1997 s 28(5)(a). In determining for the purpose of s 28(5) or s 28(7) whether a life prisoner to whom these provisions apply has served the relevant part of his sentence, no account is to be taken of any time during which he was unlawfully at large within the meaning of the Prison Act 1952 s 49 (as amended) (see PARA 540 ante): Crime (Sentences) Act 1997 s 28(8).

12 Ibid s 28(5)(b).

13 Ibid s 28(5). See also *Thynne, Wilson and Gunnell v United Kingdom* (1990) 13 EHRR 666, ECtHR; and note 1 supra.

14 Crime (Sentences) Act 1997 s 28(6)(a).

15 Ibid s 28(6)(b). This test requires the Board to be satisfied that the prisoner does not present a substantial risk of re-offending in a manner which is dangerous to life or limb or of committing serious sexual offences: see *R v Secretary of State for the Home Department, ex p Benson* (1988) Times, 8 November, DC; *R v Parole Board, ex p Bradley* [1990] 3 All ER 828, [1991] 1 WLR 134, DC. The burden of proof is thus cast upon the prisoner. This contrasts significantly with the justification for imposing the sentence, namely that (1) the offence or offences are in themselves grave enough to require a very long sentence; (2) it appears from the nature of the offences or from the defendant's history that he is a person of unstable character likely to commit such offences in the future; and (3) if the offences are committed the consequences to others may be specially injurious, as in the case of sexual offences or crimes of violence: see *R v Hodgson* (1967) 52 Cr App Rep 113, [1968] Crim LR 46, CA. Prisoners who deny their offences should not automatically be refused release, though the fact of that denial may make the task of risk assessment particularly difficult: see PARA 620 note 4 ante.

Where a panel of the Parole Board determines that it is safe to release a prisoner but is unable to direct release because suitable release arrangements have not been put in place, the panel has discharged the function of the Parole Board under the Crime Sentences Act s 28(5), and is functus officio: *R v Parole Board, ex p Robinson* (29 July 1999, unreported). Any future panel convened to consider the prisoner's case may not re-open the issue of risk, but must direct release once suitable arrangements are in place: *R v Parole Board, ex p Robinson* supra.

Though the Board only has power to direct release, in practice it is invited by the Secretary of State to advise whether a prisoner should be transferred to an open prison or should have his case next referred to the Board in less than the statutory period (see note 17 infra). As to open prisons see PARA 640 post. In relation to all advice given, the Secretary of State is entitled to take a different course, though any unreasonable failure to follow a recommendation by the Board will be susceptible to judicial review: see eg *R v Secretary of State for the Home Department, ex p Douglas* (15 June 1994, unreported), DC. Where the Secretary of State does reject a recommendation he must, as a matter of fairness, address the reasons given by the Board for taking the view with which he is disagreeing: *R v Secretary of State for the Home Department, ex p Murphy* [1997] COD 478.

16 Crime (Sentences) Act 1997 s 28(7)(a). See the text and note 12 supra. A prisoner to whom s 28 (as amended) applies is entitled to require the Secretary of State to have his first parole review conducted immediately upon the expiry of the relevant part or punitive period, or as soon as practicable thereafter: *R v Secretary of State for the Home Department, ex p Norney* (1995) Times, 6 October, DC. See also the Prison Service Instruction to Governors 103/1995, giving effect to this judgment by requiring cases to be referred to the Board six months before the expiry of the specified period, so that all preparation can be completed before the punitive period has expired. The prisoner is entitled, under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 5(4) (see PARA 504 ante), to have the review conducted speedily. The question whether that condition has been met depends upon the particular circumstances of the case: *Sanchez-Reisse v Switzerland* (1986) 9 EHRR 71 at para 55; Application 25601/94 *Roux v United Kingdom* [1997] EHRR 102. Relevant circumstances are the diligence shown by the national authorities or whether the delay is attributable to factors for which the state is responsible: *Koendjiahari v Netherlands* (1990) 13 EHRR 820, ECtHR; *E v Norway* (1990) 17 EHRR 30. It is for the state to justify any delay which is prima facie excessive: *Koendjiahari v Netherlands* supra. The protection of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 5(4) extends to the proceedings in which a decision adverse to the prisoner is challenged in superior courts, eg judicial review of the Board's refusal to direct release: see *Luberti v Italy* (1984) 6 EHRR 440, ECtHR.

17 'Previous reference' means a reference under the Crime (Sentences) Act 1997 s 28(6) or s 32(4) (see PARA 626 post): s 28(7). Following a review the Board may recommend that the prisoner's case should be heard

sooner than the statutory period. The Secretary of State is not obliged to accept any such recommendation, though his refusal to do so may be susceptible to challenge by way of judicial review: see note 15 *supra*.

18 Crime (Sentences) Act 1997 s 28(7)(b).

19 *Ibid* s 28(7)(c) (amended by the Crime and Disorder Act 1998 Sch 8 para 130(2)).

20 See the Parole Board Rules 1997, made under the Criminal Justice Act 1991 s 32(5). The rules apply to reviews conducted under the Crime (Sentences) Act 1997 s 28(6)(a), (7) (see the text and notes *supra*) and to recall reviews under s 32(4) (see PARA 626 *post*), ie where the recall review relates to a life prisoner to whom the provisions of s 28 apply (all life prisoners except those who are serving a mandatory life sentence or treated as serving such a sentence for the purpose of the Criminal Justice Act 1991 Pt II): see the Parole Board Rules 1997 rr 2(1), 19. The Rules are not required to be made by statutory instrument and do not require parliamentary approval.

21 Ie the chairman appointed under the Criminal Justice Act 1991 Sch 5 para 2 (see PARA 619 *ante*): Parole Board Rules 1997 r 2(2).

22 *Ibid* r 3(1).

23 *Ibid* r 3(2). In practice a judge of the High Court chairs any hearing involving a prisoner convicted of terrorist offences, the attempted murder or wounding of a police officer, the sexual assault or mutilation of a child, serial rape, manslaughter following release from a previous sentence imposed in respect of manslaughter, or where the prisoner is the subject of multiple life sentences. It is almost invariably the case that a psychiatrist sits on the panel, though this is not required by the rules.

24 *Ibid* r 2(2).

25 *Ibid* r 6(1). Within three weeks of the case being listed, a party must notify the Board and the other party of the name, address and occupation of any person so authorised: r 6(3).

26 See *ibid* r 6(2), which excludes any person (1) liable to be detained under the Mental Health Act 1983; (2) serving a sentence of imprisonment; (3) who is on licence having been released from a sentence of imprisonment; and (4) who has a previous conviction for a criminal offence which remains unspent under the Rehabilitation of Offenders Act 1974.

27 Parole Board Rules 1997 r 6(4).

28 See *ibid* s 6(5); and note 35 *infra*.

29 See *ibid* r 4.

30 See *ibid* r 5(1), Schedule 1 Pts A, B. The information and reports referred to are:

57 (i) the full name of the prisoner;

58 (ii) his age;

59 (iii) the prison in which he is detained and details of other establishments in which he has been detained, and the date and reasons for transfer;

60 (iv) the date he was sentenced and details of his offence;

61 (v) the comments, if available, of the trial judge in passing sentence;

62 (vi) where applicable, the conclusions of the Court of Appeal in respect of any appeal by the prisoner against conviction or sentence;

63 (vii) the details of any life sentence plan for the prisoner which have previously been disclosed to him;

64 (viii) any pre-trial and pre-sentence reports examined by the court and post-trial police report on the circumstances of the offence(s);

65 (ix) any report on a prisoner while he was subject to a transfer direction under the Mental Health Act 1983;

- 66 (x) any current reports on the prisoner's performance and behaviour in prison and, where relevant, on his health including any opinions on his suitability for release on licence (reports previously examined by the Board need only be summarised) as well as his compliance with the sentence plan;
- 67 (xi) an up to date home circumstances report prepared by a probation officer including information on: (A) details of his home address, family circumstances and family attitude towards the prisoner, (B) alternative options to the offender if he cannot return home, (C) the opportunity for employment on release, (D) the local community's attitude towards the prisoner (if known), including attitudes and concerns of the victim(s) of the offence(s), (E) the prisoner's response to previous periods of supervision, (F) the prisoner's behaviour during temporary leave during the current sentence, (G) the prisoner's response to discussions of the objectives of supervision where applicable, (H) an assessment of the risk of re-offending, (I) a programme of supervision, (J) a recommendation for release, and (K) recommendations regarding special licence conditions;
- 68 (xii) such further or other information as the Secretary of State considers relevant to the case.

31 See the Parole Board Rules 1997 r 5(2). Where he does so, he must record such information or reports in a separate document and serve that document on the Board together with his reasons for considering that it should be withheld: r 5(2). The document must nonetheless be served on the prisoner's representative where that representative is a barrister or solicitor, a registered medical practitioner or a person whom the chairman of the panel directs is suitable by virtue of his experience or professional qualification, provided that no such information may be disclosed either directly or indirectly to the prisoner or any other person without the authority of the chairman of the panel: r 5(3). The material contained in the document will then be considered by the chairman of the panel who will decide whether it should be disclosed to the prisoner: r 9(1)(d). Where he makes a direction in respect of disclosure each party has 14 days in which to appeal to the chairman; the other party must be notified by the chairman of the appeal, and the chairman's decision is final: r 9(2). This does not preclude the chairman's decision being challenged by way of proceedings for judicial review.

32 Ibid r 8(1).

33 Ibid r 8(2).

34 See *ibid* r 7(1). The application must include the name, address and occupation of the witnesses and the substance of the evidence which the party proposes to adduce: r 7(1).

35 Ibid r 7(2). If a prisoner wishes any other person to attend the hearing to observe or provide support, the chairman has a discretion to permit the attendance subject to his consulting with the governor of the prison: r 6(5).

36 Ibid r 9(1). In addition to giving directions, the chairman may vary or revoke any direction previously given: r 9(3). Whether he exercises these powers of his own motion or on application by a party, he must give the parties an opportunity to make representations before he does so: r 9(3).

37 Ibid r 9(4)-(6).

38 Ibid r 10. When fixing the date of the hearing the Board must consult the parties: r 11(1). At least 21 days' notice must be given of the date, time and location of the hearing: r 11(2).

39 See *ibid* r 12. Save in so far as the chairman of the panel directs, information about the proceedings and the names of any persons concerned may not be made public: r 12(2). Panels conducting hearings in relation to prisoners to whom the Crime (Sentences) Act 1997 s 28 applies, are likely to be characterised as a court to which the laws of contempt apply. While it may not be a contempt to publish the date, time and place of a hearing as well as the fact that a prisoner has been released as a result, publication of evidence and other material on which the decision was based would appear to amount to a contempt: see *Pickering v Liverpool Daily Post Plc* [1991] 2 AC 370, [1991] 1 All ER 622, HL (mental health review tribunals). The chairman of the panel may admit to the hearing such persons on such terms and conditions as he considers appropriate: Parole Board Rules 1997 r 12(3). Where in the opinion of the chairman a person present is behaving in a disruptive manner, he may require him to leave and permit him to return, if at all, only on such conditions as he may specify: r 13(4).

40 See *ibid* r 13(1), (2).

41 Ibid r 13(3). The panel does not have a power to subpoena witnesses, as the Parole Board is not a tribunal to which the Tribunals and Inquiries Act 1992 applies (see ADMINISTRATIVE LAW). Parties may apply to the county court or High Court for a witness summons under the CPR 34.4 (witness summons in aid of inferior court or tribunal). The Parole Board also has power to gather its own evidence: see the Criminal Justice Act 1991 s 32(3)(b); and PARA 618 ante.

42 Parole Board Rules r 13(5).

43 Ibid r 13(6).

44 Ibid r 13(7).

45 Ibid r 14(1). Thus the panel may be satisfied that it is no longer necessary for the prisoner to be detained subject to certain conditions pertaining to the circumstances of his release being met. The panel may adjourn the hearing, having heard all the evidence, in order that those conditions can be secured. It may then reconvene without a further hearing to determine whether it is now satisfied that the prisoner can safely be released, and issue a direction to that effect in writing. Where a hearing is adjourned the panel may give such directions as it thinks fit for ensuring the prompt consideration of the application at the resumed hearing: r 14(2). Where the panel resumes an oral hearing without first fixing a hearing date, it must give the parties not less than 14 days' notice, or such shorter notice to which all the parties consent, of the date, time and place of the resumed hearing: r 14(3).

46 Ibid r 15(1). The decision must be recorded in writing with reasons, signed by the chairman of the panel, and communicated to the parties in writing not more than seven days after the end of the hearing: r 15(2).

The Crime (Sentences) 1997 Act places the power to take the decision on the Parole Board. Though it is presented with reports from, inter alios, prison staff, it is not obliged to accept those views even if they are unanimous, unless in taking a different course it is acting irrationally in that its decision is unsupported by any of the other material presented to it: *R v Parole Board, ex p Telling* (1993) Times, 10 May, DC; *R v Secretary of State for the Home Department and the Parole Board, ex p Evans* (2 November 1994, unreported), DC (Board rejected the clear, emphatic and unanimous views of report writers; the Divisional Court held that in such a case the reasons should have included an explanation in sufficiently clear terms and sufficiently full to ensure that the basis for the difference between them could be understood). The duty to give reasons requires that they are intelligible and deal with the substantial points that have been raised: *R v Parole Board, ex p Gittens* (1994) Times, 3 February, DC; *R v Parole Board, ex p Lodomez* (1994) 26 BMLR 162, [1994] COD 525, DC.

UPDATE

612-622 Release

For provision relating to polygraph conditions for certain offenders released on licence see PARA 622A.

621 Duty to release certain life sentence prisoners and prisoners detained at Her Majesty's pleasure

TEXT AND NOTES 1-11--Crime (Sentences) Act 1997 s 28(1)-(4), (5)(a) now s 28(1A), (1B), (5)(a) (substituted by Criminal Justice and Court Services Act 2000 Sch 7 para 136(a); 1997 Act s 28(1A) now substituted, s 28(1B) amended, by Criminal Justice Act 2003 s 275(2), (3)).

A court passing a mandatory life sentence must make an order specifying the minimum term the prisoner must serve before the Parole Board can consider his release on licence under the 1997 Act s 28 and must explain its reasons for deciding on the order made: see the 2003 Act ss 269, 270, Sch 21 (s 269 amended by the Armed Forces Act 2006 Sch 16 para 228).

As to the sentencing court's approach to general principles set out in the 2003 Act Sch 21 and to sentencing guidelines, see *R v Peters* [2005] EWCA Crim 605, [2005] 2 Cr App Rep (S) 627. As to transitional cases see 2003 Act s 276, Sch 22; Criminal Justice Act 2003 (Mandatory Life Sentences: Appeals in Transitional Cases) Order 2005, SI 2005/2798; *R (on the application of Hammond) v Secretary of State for the Home Department* [2005] UKHL 69, [2006] 1 AC 603; *R v Walker* [2005] EWCA Crim 82, [2005] 2 Cr App Rep (S) 328; *Re Brown (reference under paragraph 6 of Schedule 22 to the Criminal Justice Act 2003)* [2006] All ER (D) 280 (Mar); *Re Cadman (application under para 3 of Sch 22 to the Criminal Justice Act 2003)* [2006] All ER (D) 342 (Mar); *R*

v Ainsworth (2006) Times, 13 September; *Re Waters* [2006] EWHC 355 (QB), [2006] 3 All ER 1251; and *Re Bingham* (application under para 3 of Sch 22 to the Criminal Justice Act 2003) [2006] EWHC 2591 (QB), [2006] All ER (D) 262 (Oct).

The 1997 Act s 28 applies to a life prisoner in respect of whom a minimum term order has been made; and any reference in s 28 to the relevant part of such a prisoner's sentence is a reference to the part of the sentence specified in the order: s 28(1A). 'Minimum term order' means an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 82A(2), or the 2003 Act s 269(2) (determination of minimum term in respect of mandatory life sentence): 1997 Act s 28(8A) (added by 2003 Act s 275(4)).

But if a life prisoner is serving two or more life sentences (1) the 1997 Act s 28 does not apply to him unless a minimum term order has been made in respect of each of those sentences; and (2) the provisions of s 28(5)-(8) do not apply in relation to him until he has served the relevant part of each of them: s 28(1B) (amended by 2003 Act s 275(3)).

If a court passes a life sentence (see NOTE 4) in circumstances where the sentence is not fixed by law, the court must, unless it makes an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 82A(4), order that the provisions of the 1997 Act s 28(5)-(8) (referred to in the Powers of Criminal Courts (Sentencing) Act 2000 s 82A as the 'early release provisions') apply to the offender as soon as he has served the part of his sentence which is specified in the order: s 82A(1), (2) (s 82A added by Criminal Justice and Court Services Act 2000 s 60(1); Powers of Criminal Courts (Sentencing) Act 2000 s 82A(1) amended by 2003 Act Sch 32 para 109(2), Sch 37 Pt 8). The part of his sentence is such as the court considers appropriate taking into account (a) the seriousness of the offence, or of the combination of the offence and one or more offences associated with it; (b) the effect of any direction which it would have given under the 2003 Act s 240 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 36-37) or under the Armed Forces Act 2006 s 246 (equivalent provision for service courts) or under the 2003 Act s 240A (crediting periods of remand on bail subject to certain types of condition) if it had sentenced him to a term of imprisonment; and (c) the early release provisions as compared with the 2003 Act s 244(1) (see PARA 617): Powers of Criminal Courts (Sentencing) Act 2000 s 82A(3) (amended by 2003 Act Sch 32 para 109(3)(b); the Armed Forces Act 2006 Sch 16 para 163; and the Criminal Justice and Immigration Act 2008 s 22(5)). If the offender was aged 21 or over when he committed the offence and the court is of the opinion that, because of the seriousness of the offence or of the combination of the offence and one or more offences associated with it, no order should be made under the 2000 Act s 82A(2), the court must order that the early release provisions do not apply to the offender: s 82A(4) (s 82A as added; s 82A(4) amended by 2003 Act Sch 32 para 109(4), Sch 37 Pt 8). In the Powers of Criminal Courts (Sentencing) Act 2000 s 82A 'court' includes the Court Martial: s 82A(7) (amended by the Armed Forces Act 2006 Sch 16 para 163). The risk posed by the offender is not relevant to the determination under s 82A(4): *R v McMilan* [2005] EWCA Crim 222, [2005] 2 Cr App Rep (S) 376.

NOTE 4--'Life prisoner' now means a person serving one or more life sentences and includes a transferred life prisoner as defined by the 2003 Act s 273 (see PARA 557): 1997 Act s 34(1) (amended by Criminal Justice and Court Services Act 2000 Sch 7 para 138, Sch 8; and 2003 Act s 273(4)). Definition of 'life sentence' amended: Armed Forces Act 2006 Sch 16 para 142. Crime (Sentences) Act 1997 s 34(3) repealed: Armed Forces Act 2006 Sch 17.

NOTE 8--1997 Act s 34(3) repealed: Armed Forces Act 2006 Sch 16 para 142.

NOTE 9--1997 Act s 28(9) repealed: Criminal Justice and Court Services Act 2000 Sch 7 para 136(b), Sch 8.

NOTE 10--The sentencing court now determines the tariff: see Powers of Criminal Courts (Sentencing) Act 2000 s 82A, TEXT AND NOTES 1-11.

The tariffs set in *Thompson and Venables*, cited, were reviewed in *Re Thompson (tariff recommendations)* [2001] 1 All ER 737, CA. In relation to an offender detained during Her Majesty's pleasure before s 82A came into force, the tariff must be reviewed periodically by the Secretary of State: *R (on the application of Smith) v Secretary of State for the Home Department* [2005] UKHL 51, [2005] 3 WLR 410. A review of a tariff by the Lord Chief Justice under the provisional scheme introduced before the coming into force of s 82A does not contravene the right to a fair hearing under the European Convention on Human Rights art 6: *R (on the application of Dudson) v Secretary of State for the Home Department* [2005] UKHL 52, [2005] 3 WLR 422.

TEXT AND NOTE 11--For 'the part ... the relevant part)' read 'the relevant part of his sentence': 1997 Act s 28(5)(a) (see TEXT AND NOTES 1-11).

NOTE 15--A breach by the Secretary of State of his public law duty to provide such courses as would enable prisoners with indeterminate sentences for public protection to demonstrate their safety for release does not result in post-tariff detentions being unlawful at common law: *R (on the application of James) v Secretary of State for Justice*; *R (on the application of Lee) v Secretary of State for Justice*; *R (on the application of Wells)* [2009] UKHL 22, [2009] 4 All ER 255.

NOTE 31--The Board is permitted in exceptional circumstances to limit access to certain information to a special advocate appointed to act on the claimant's behalf: *Roberts v Parole Board* [2005] UKHL 45, [2005] 3 WLR 152.

NOTES 40, 41--See *R (on the application of Gardner) v Parole Board* [2006] EWCA Civ 1222, [2006] All ER (D) 12 (Sep) (Board had power to exclude prisoner from part of a hearing).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/(i) Release/622. Power to release certain other life sentence prisoners.

622. Power to release certain other life sentence prisoners.

If recommended to do so by the Parole Board¹, the Secretary of State² may, after consultation with the Lord Chief Justice together with the trial judge³, if available, release on licence a mandatory life sentence prisoner⁴. The Board must not make such a recommendation unless the Secretary of State has referred the particular case, or the class of case to which that case belongs, to the Board for its advice⁵.

The Secretary of State may not release a mandatory life sentence prisoner without a favourable recommendation from the Board, but he is not obliged to follow the Board's advice⁶.

The broad statutory release discretion is vested in the Secretary of State, not a judicial body. The European Court of Human Rights has held that, unlike the discretionary life sentence and detention during Her Majesty's pleasure⁷, the mandatory life sentence is not subject to the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)⁸ and accordingly mandatory life sentence prisoners do not have a right to periodic reviews of their continuing detention by the Board and the Board is not empowered to direct their release on licence⁹.

Since 1983, statements have been made to Parliament by various Home Secretaries indicating how the broad release discretion in relation to mandatory life sentence prisoners is exercised¹⁰. The formulation of a published policy affecting the release of mandatory life sentence prisoners does not prevent the Secretary of State from altering the policy, thereby frustrating a prisoner's expectation of release at a particular point, so long as the new policy does not offend against basic principles of common law and justice¹¹. Under existing policy, the mandatory life sentence is broadly divided into two phases: the 'tariff phase' and the 'post-tariff phase'¹². The term 'tariff' is used to describe the period which a mandatory life sentence prisoner must serve in prison to satisfy the requirements of retribution and deterrence¹³. The tariff is set by the Secretary of State as soon after conviction as possible and following consideration of the views of the trial judge, the Lord Chief Justice and any representations which the prisoner wishes to make in the light of disclosure to him of the views of the judiciary on the requirements of retribution and deterrence in his case¹⁴. In fixing the tariff the Secretary of State is not obliged to accept the recommendation of either the trial judge or the Lord Chief Justice¹⁵ but he is not entitled to act inconsistently with the verdict of the jury in the (very rare) cases where the jury's verdict is capable of conveying a particular factual basis for the finding of guilt¹⁶. In the absence of exceptional circumstances, such as new facts emerging which affect the tariff, the Secretary of State is not entitled to increase a mandatory life sentence prisoner's tariff fixed by his predecessor which has been fixed and communicated to the prisoner¹⁷. It is not an unlawful exercise of the Home Secretary's release discretion for him to decide that the requirements of retribution and deterrence in an individual case justify a whole life tariff¹⁸. In the post-tariff phase, a mandatory life sentence prisoner's continued detention depends on an assessment by the Secretary of State of whether there is an unacceptable risk of the prisoner committing serious imprisonable offences if released on licence¹⁹.

The first review of a mandatory life sentence prisoner's case by the Parole Board begins after the Secretary of State has referred his case to the Board²⁰. In conducting its review, the Board is required to follow the directions issued to it by the Secretary of State²¹. A mandatory life sentence prisoner has no right to an oral hearing before the Board, but the Board does have a discretion to hold such a hearing in an appropriate case²². As a matter of administrative policy mandatory life sentence prisoners are provided with full disclosure of the contents of the

dossier given to the Board so that they may make informed representations. The Board may make one of three possible recommendations: (1) no further progress; (2) a move to open conditions; or (3) release²³. The principles which apply to the Board's consideration of mandatory life sentence prisoners who deny their guilt of the index offence are the same as those which apply to fixed term prisoners²⁴. The ultimate decision, whether in relation to a move to open conditions or release on licence, rests with the Secretary of State. Where he rejects the views of the Board, he is obliged to give reasons for his decision; and his decision is susceptible to judicial review where his reasons are insufficient or his decision is irrational²⁵.

1 As to the Parole Board see PARAS 618-619 ante.

2 As to the Secretary of State see PARA 505 ante.

3 'Trial judge' includes a trial judge advocate: Crime (Sentences) Act 1997 s 34(3).

4 See *ibid* s 29(1). This provision refers to a life prisoner who is not one to whom s 28 (as amended) applies, but this effectively means a mandatory sentence prisoner.

5 *Ibid* s 29(2).

6 *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531, sub nom *Doody v Secretary of State for the Home Department* [1993] 3 All ER 92, HL.

7 See PARA 621 ante.

8 *I.e.* the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 5(4) (see PARA 504 ante).

9 *Wynne v UK* (1994) 19 EHRR 333. In rejecting the argument that, like the discretionary life sentence, the mandatory life sentence contained a punitive and a protective element, the European Court of Human Rights relied on the fact that the mandatory life sentence is imposed automatically as the punishment for the offence of murder irrespective of the dangerousness of the offender and that it authorised lifelong punitive detention. The European Court of Human Rights also referred to the statement in *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531 at 559, sub nom *Doody v Secretary of State for the Home Department* [1993] 3 All ER 92 at 105, HL, per Lord Mustill, that in exercising his broad release discretion towards mandatory life sentence prisoners the Secretary of State is compelled, or at least entitled, to have regard to broader considerations of a public character than those which apply to an ordinary sentencing function. Since *R v Secretary of State for the Home Department, ex p Doody* supra was decided, the House of Lords has held that the exercise of tariff-fixing is in reality a sentencing exercise: see *R v Secretary of State for the Home Department, ex p Venables and Thompson* [1998] AC 407, [1997] 3 All ER 97, HL. It has been said that it is no longer realistic to regard a mandatory life prisoner as someone who has forfeited his life to the state or who is in mercy unless there is an exercise in his favour of an inscrutable executive discretion: see *R v Secretary of State for the Home Department, ex p Stafford* [1998] 1 WLR 503 at 521, CA, per Buxton LJ (decision affd [1998] 4 All ER 7, [1998] 3 WLR 372, HL). For a critical assessment of the administration of the mandatory life sentence in comparison with the discretionary life sentence see *R v Secretary of State for the Home Department, ex p Pegg* (1994) Times, 11 August, DC. As to the management of mandatory life sentence prisoners see Prison Service Order 4700, 'The Lifer Manual'.

10 See eg 49 HC Official Report (6th series), 30 November 1983, written answers col 505; 74 HC Official Report (6th series), 1 March 1985, written answers col 309; 120 HC Official Report (6th series), 23 July 1987, written answers col 347; 229 HC Official Report (6th series), 27 July 1993, written answers col 861; 231 HC Official Report (6th series), 4 November 1993, written answers col 379; 251 HC Official Report (6th series), 7 December 1994, written answers col 234; 300 HC Official Report (6th series), 10 November 1997, written answers col 419.

The history of the development of policy and practice in relation to the mandatory life sentence is comprehensively analysed in the speech of Lord Mustill in *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531, sub nom *Doody v Secretary of State for the Home Department* [1993] 3 All ER 92, HL. See also the judgment of Buxton LJ in *R v Secretary of State for the Home Department, ex p Stafford* [1998] 1 WLR 503, CA (decision affd [1998] 4 All ER 7, [1998] 3 WLR 372, HL).

11 *Re Findlay* [1985] AC 318, [1984] 3 All ER 801, HL. See also *R v Secretary of State for the Home Department, ex p Pierson* [1998] AC 539, [1997] 3 All ER 577, HL; *R v Secretary of State for the Home Department, ex p Hindley* [1999] 2 WLR 1253, CA.

12 See eg 300 HC Official Report (6th series), 10 November 1997, written answers col 419.

13 See Lord Mustill's analysis of the development of the tariff policy in *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531, sub nom *Doody v Secretary of State for the Home Department* [1993] 3 All ER 92, HL.

14 *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531, sub nom *Doody v Secretary of State for the Home Department* [1993] 3 All ER 92, HL.

Since the decision in that case, the practice is, after a murder conviction, for the trial judge to prepare a standard form report which identifies the significant aspects of the case and the judge's opinion on what the tariff should be. Such a report is made even when the trial judge has made a minimum recommendation under the Murder (Abolition of Death Penalty) Act 1965 s 1(2) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 90). The report is then submitted to the Lord Chief Justice who gives his views on the appropriate tariff. The views of the trial judge and the Lord Chief Justice are communicated to the Home Secretary (in practice, the Tariff Unit of the Parole and Lifer Review Group, based at Prison Service headquarters). This is followed by disclosure to the prisoner of the judicial views on tariff. Once the tariff has been fixed, the Home Secretary is required to give reasons for his decision. Where the Home Secretary departs from the judicial recommendation and fixes a higher tariff than that recommended, his decision is susceptible to judicial review where he fails to give adequate reasons or his decision is irrational.

See also *R v Secretary of State for the Home Department, ex p Raja and Riaz* (16 December 1994, unreported), DC.

15 Where the Lord Chief Justice's views differs from that of the trial judge, it is the view of the Lord Chief Justice which is regarded as the judicial view on tariff: *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531, sub nom *Doody v Secretary of State for the Home Department* [1993] 3 All ER 92, HL.

16 *R v Secretary of State for the Home Department, ex p Causabon-Vincent* (1996) Times, 19 July, [1997] COD 245, CA.

17 *R v Secretary of State for the Home Department, ex p Hindley* [1999] 2 WLR 1253, CA. Nor may a tariff be fixed in terms which amount to a retrospective increase in the punitive term: *R v Secretary of State for the Home Department, ex p McCartney* (1994) Times, 25 May, [1994] COD 528, CA.

18 *R v Secretary of State for the Home Department, ex p Hindley* [1999] 2 WLR 1253, CA.

19 *R v Secretary of State for the Home Department, ex p Stafford* [1999] 2 AC 38, [1998] 4 All ER 7, HL. In addition, there is a need to maintain public confidence in the system of criminal justice, and the Home Secretary has asserted that it remains possible for him 'exceptionally' to revise his view by reducing or increasing it: see 229 HC Official Report (6th series), 27 July 1993, written answers col 861; 300 HC Official Report (6th series), 10 November 1997, written answers col 419.

20 See the Crime (Sentences) Act 1997 s 29(2); and the text and note 5 supra. Until the Secretary of State refers a mandatory life sentence prisoner's case to it, the Board has no power to consider that case. The current policy is to commence the process of first review of a mandatory life sentence prisoner's case three and a half years before the expiry of tariff occurs. This is designed to ensure that as many life sentence prisoners as possible are released on or very shortly after tariff expiry where the level of risk is considered to be acceptable.

21 See the Criminal Justice Act 1991 s 32(6) (as amended); and PARA 618 ante. As to the status and relevance of the directions see *R v Secretary of State for the Home Department, ex p Stafford* [1999] 2 AC 38, [1999] 4 All ER 7, HL.

The directions require the Board before recommending release to consider whether the prisoner has shown by his performance in prison that he has made positive efforts to address his attitudes and behavioural problems and the extent to which progress has been made in doing so such that the risk that he will commit a further imprisonable offence after release is minimal: see 'Directions to the Parole Board under s 32(6) of the Criminal Justice Act 1991 -Release of Mandatory Life Sentence Prisoners' para 4. The Board must also consider whether the prisoner is likely to comply with the conditions of the licence and the requirements of supervision: see 'Directions to the Parole Board under s 32(6) of the Criminal Justice Act 1991 -Release of Mandatory Life Sentence Prisoners' para 4.

22 *R v Secretary of State for the Home Department, ex p Gerald Davies* (25 November 1996, unreported), DC.

23 It seems that the Secretary of State regards a period in open conditions as essential for most life sentence prisoners and that in considering whether to make a recommendation concerning a move to open conditions the Board must balance the risks against the benefits to be gained from such a move: see the directions to the Parole Board on the transfer of mandatory life sentence prisoners to open conditions.

24 *R v Secretary of State for the Home Department, ex p Lillycrop* (1996) Times, 13 December, DC. See also *R v Secretary of State for the Home Department, ex p Fenton-Palmer* [1996] COD 330, DC.

25 See *R v Secretary of State for the Home Department, ex p Cox* (1991) 5 Admin LR 17, [1992] COD 72; *R v Secretary of State for the Home Department, ex p Follen* [1996] COD 169; *R v Secretary of State for the Home Department, ex p Evans* (2 November 1994, unreported), DC; *R v Secretary of State for the Home Department, ex p Pegg* (1994) Times, 11 August, DC; *R v Secretary of State for the Home Department, ex p Freeman* (5 June 1998, unreported), DC.

UPDATE

612-622 Release

For provision relating to polygraph conditions for certain offenders released on licence see PARA 622A.

622 Power to release certain other life sentence prisoners

TEXT AND NOTES 1-5--Repealed: Criminal Justice Act 2003 Sch 37 Pt 8. See now PARA 621.

NOTES 11, 17, 18--*Hindley*, cited, affirmed: [2001] 1 AC 410, [2000] 2 All ER 385, HL.

NOTE 19--The continued detention of a post-tariff mandatory life sentence prisoner by order of the Secretary of State on the basis of perceived fears of future non-violent criminal conduct unrelated to the original conviction is a violation of the European Convention on Human Rights art 5: Application 46295/99 *Stafford v United Kingdom* (2002) 35 EHRR 1121, ECtHR. As to the payment of damages for post-tariff detention, see *R (on the application of Satpal Ram) v Secretary of State for the Home Department* [2004] EWHC 1 (QB), [2004] PIQR P454.

NOTE 20--A policy of always referring life sentence prisoners to the Parole Board after expiry of the tariff period infringes the European Convention on Human Rights art 5(4): *R (on the application of Noorkoiv) v Secretary of State for the Home Department* [2002] EWCA Civ 770, [2002] 4 All ER 515.

NOTE 23--The Board is permitted in exceptional circumstances to limit access to certain information to a special advocate appointed to act on the prisoner's behalf; a decision to do so is not discriminatory contrary to the European Convention on Human Rights arts 5, 14 as the Board has the same power in the context of discretionary life sentence prisoners, notwithstanding the Parole Board Rules 1997 r 5(2) (see PARA 621 TEXT AND NOTE 31): *Roberts v Parole Board* [2005] UKHL 45, [2005] 3 WLR 152.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/(i) Release/622A. Polygraph conditions for certain offenders released on licence.

622A. Polygraph conditions for certain offenders released on licence.

The Secretary of State may include a polygraph condition in the licence of a person serving a relevant custodial sentence (see Offender Management Act 2007 s 28(3)) in respect of a relevant sexual offence (see s 28(4)) who (1) is released on licence by the Secretary of State under any enactment; and (2) is not aged under 18 on the day on which he is released: s 28(1), (2). For the purposes of s 28, a polygraph condition is a condition which requires the released person (a) to participate in polygraph sessions conducted with a view to (i) monitoring his compliance with the other conditions of his licence; or (ii) improving the way in which he is managed during his release on licence; (b) to participate in those polygraph sessions at such times as may be specified in instructions given by an appropriate officer (see s 29(4), (5)); and (c) while participating in a polygraph session, to comply with instructions given to him by the person conducting the session ('the polygraph operator'): s 29(1). A polygraph session is a session during which the polygraph operator conducts one or more polygraph examinations of the released person; and interviews the released person in preparation for, or otherwise in connection with, any such examination: s 29(2). For the purposes of s 29(2), a polygraph examination is a procedure in which (A) the polygraph operator questions the released person; (B) the questions and the released person's answers are recorded; and (C) physiological reactions of the released person while being questioned are measured and recorded by means of equipment of a type approved by the Secretary of State: s 29(3). The Secretary of State may make rules relating to the conduct of polygraph sessions: see s 29(6)-(8). See also the Polygraph Rules 2009, SI 2009/619. The Offender Management Act 2007 ss 28, 29 are in force in specified areas for a specified period: SI 2009/32.

Any statement made by a person during a polygraph session or any physiological reaction made during such a session may not be used in criminal proceedings in which that person is the defendant: Offender Management Act 2007 s 30.

UPDATE

612-622 Release

For provision relating to polygraph conditions for certain offenders released on licence see PARA 622A.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/ (ii) Recall to Prison/623. Recall of short term and long term prisoners.

(ii) Recall to Prison

623. Recall of short term and long term prisoners.

If recommended to do so by the Parole Board¹ in the case of (1) a long term prisoner², or (2) a short term prisoner³ sentenced for an offence committed after 1 January 1999⁴ who has been released on licence⁵, the Secretary of State⁶ may revoke his licence and recall him to prison⁷. The Secretary of State may revoke the licence of any such person and recall him to prison without a recommendation by the Parole Board, where it appears to him that it is expedient in the public interest to recall that person before such a recommendation is practicable⁸. A person so recalled⁹ to prison¹⁰: (a) may make representations in writing with respect to his recall¹¹; and (b) on his return to prison, must be informed of the reasons for his recall and of his right to make representations¹².

The Secretary of State must refer to the Parole Board¹³: (i) the case of a person recalled¹⁴ who makes such representations¹⁵; and (ii) the case of a person recalled without a recommendation of the Parole Board¹⁶.

Where on such a reference the Parole Board recommends in the case of any person, his immediate release on licence under this provision, the Secretary of State must give effect to the recommendation¹⁷. On the revocation of the licence of any person under this provision, he is liable to be detained in pursuance of his sentence and, if at large, is deemed to be unlawfully at large¹⁸.

In the case of an extended sentence prisoner who has been recalled, he may, in addition to having his case referred to the Board like other long term prisoners¹⁹, require the Secretary of State to refer his case to the Board at any time²⁰, save that where there has been a previous reference, the Secretary of State is not required to refer the case until after the end of the period of one year beginning with the disposal of that reference²¹. Where the Parole Board considers the case of an extended sentence prisoner²² it must direct his release if satisfied that it is no longer necessary for the protection of the public that he should be confined (but not otherwise)²³. If the Board gives a direction for his release, it is the duty of the Secretary of State to release the extended sentence prisoner²⁴.

1 As to the Parole Board see PARA 618 ante. In deciding whether or not to recommend the prisoner's recall the Parole Board must consider whether the prisoner's continued liberty would present an unacceptable risk to the public of further offences being committed. In considering that issue, the Parole Board must, in particular, take into account: (1) whether the prisoner is likely to commit further offences; and (2) whether he has failed to comply with one or more of his licence conditions or might be likely to do so in the future: Secretary of State's Directions to the Parole Board - Recall of Determinate Sentence Prisoners (issued pursuant to the Criminal Justice Act 1991 s 32(6) (as amended) (see PARA 618 ante)).

2 For the meaning of 'long term prisoner' see PARA 617 note 3 ante. For the purposes of the Criminal Justice Act 1991 ss 37(5) (as substituted), 39(1), (2) (s 39(1) as amended), the question whether the prisoner is a long term or short term prisoner is determined by reference to the term of the extended sentence: s 44(7) (s 44 substituted by the Crime and Disorder Act 1998 s 59). As to extended sentence prisoners see PARA 617 ante. See also the text and notes 19-24 infra.

3 For the meaning of 'short term prisoner' see PARA 617 note 2 ante.

4 Before 1 January 1999 the Criminal Justice Act 1991 s 39 (as amended) did not apply to short term prisoners. In relation to short term prisoners whose sentence or any part of whose sentence was imposed for an

offence committed before 1 January 1999, s 38 (otherwise repealed) continues to apply instead of the provisions of s 39 (as amended). For the purposes of determining whether a prisoner sentenced to an extended sentence under the Crime and Disorder Act 1998 s 58 (see PARA 617 ante) is a short term prisoner to whom the Criminal Justice Act 1991 s 38 applies, both the custodial term and the extension period must be taken into account in calculating the length of sentence: s 44(7) (substituted by the Crime and Disorder Act 1998 s 59); Crime and Disorder Act 1998 Sch 9 para 12(7)(b). As to extended sentences see PARA 617 ante.

A short term prisoner (whose sentence or any part of whose sentence was imposed for an offence committed before 1 January 1999: ie the date the Crime and Disorder Act 1998 s 103 came into force): (1) who is released on licence under the Criminal Justice Act 1991 Pt II (ss 32-51) (as amended); and (2) who fails to comply with such conditions as may for the time being be specified in the licence, is liable on summary conviction to a fine not exceeding level 3 on the standard scale: see s 38(1); the Crime and Disorder Act 1998 s 120(1), Sch 9 para 12; and the Crime and Disorder Act 1998 (Commencement No 3 and Appointed Day) Order 1998, SI 1998/3263, art 2(a). As to the standard scale see PARA 517 note 4 ante. The magistrates' court by which a person is convicted of such an offence may, whether or not it passes any other sentence on him: (a) suspend the licence for a period not exceeding six months; and (b) order him to be recalled to prison for the period during which the licence is so suspended: Criminal Justice Act 1991 s 38(2). As to the re-release of a short term prisoner who has been recalled to prison by order of a magistrate see PARA 617 ante. On the suspension of the licence of any person, he is liable to be detained in pursuance of his sentence and, if at large, is deemed to be unlawfully at large: s 38(3). Section 38 is repealed subject to transitional provisions by the Crime and Disorder Act 1998 ss 103(2), 120, Sch 9 para 12(1), (2)(a), (c), Sch 10.

5 Ie under the Criminal Justice Act 1991 Pt II (ss 32-51) (as amended) (see PARAS 617, 620 ante): see s 39(1) (as amended: see note 7 infra).

6 As to the Secretary of State see PARA 505 ante.

7 Criminal Justice Act 1991 s 39(1) (amended by the Crime and Disorder Act 1998 s 103(3); and the Crime (Sentences) Act 1997 (Commencement No 2 and Transitional Provisions) Order 1997, SI 1997/2200). The Crime and Disorder Act 1998 s 103 has effect for the purpose of securing that, subject to s 100(2), the circumstances in which prisoners released on licence under the Criminal Justice Act 1991 Pt II (as amended) may be recalled to prison are the same for short term and long term prisoners: Crime and Disorder Act 1998 s 103(1). As to the re-release of short term prisoners who have been recalled see PARA 617 ante.

The Parole Board and Secretary of State will normally exercise the power of recall following a recommendation from the probation service responsible for the supervision of the prisoner, where he is failing to comply with the conditions of his licence; it is not necessary for the prisoner to have committed an offence: see the Prison Service Order 6000, Chapter 10, PARA 7.2.

8 Criminal Justice Act 1991 s 39(2).

9 Ie under *ibid* s 39(1) (as amended) or s 39(2): see s 39(3).

10 *Ibid* s 39(3).

11 *Ibid* s 39(3)(a). A prisoner will be provided with a memorandum containing the reasons for his recall as well as associated papers; any representations that he makes will, accordingly, be made in the light of those reasons: Prison Service Order 6000, chapter 10, PARA 7.4.1.

12 Criminal Justice Act 1991 s 39(3)(b).

13 *Ibid* s 39(4).

14 Ie under *ibid* s 39(1) (as amended): see s 39(4)(a).

15 *Ibid* s 39(4)(a).

16 *Ibid* s 39(4)(b). The person must be recalled under s 39(2): see s 39(4)(b).

17 *Ibid* s 39(5) (amended by the Crime (Sentences) Act 1997 (Commencement No 2 and Transitional Provisions) Order 1997, SI 1997/2200, art 2). As to the matters to which the Parole Board is required to have regard in deciding whether or not to recommend the immediate release of a prisoner who has been recalled see note 1 *supra*.

18 Criminal Justice Act 1991 s 39(6). As to the automatic re-release of a person so recalled see PARA 617 ante. As to the discretionary re-release of such a person see PARA 620 ante.

19 Ie under the Criminal Justice Act 1991 s 39(4).

20 Ibid s 44A(2) (s 44A added by the Crime and Disorder Act 1998 s 60).

21 Criminal Justice Act 1991 s 44A(3) (as added: see note 20 supra). A recalled extended sentence prisoner thus has a right to have his case considered by the Parole Board upon recall in accordance with the provisions of s 39(4), and thereafter at annual intervals.

22 Ie whether under ibid s 39(4) or s 44A(3) (as added).

23 Ibid s 44A(5) (as added: see note 20 supra). See also s 39(5A) (added by the Crime and Disorder Act 1998 Sch 8 para 84). The statutory test adopts precisely the same wording as applies in the case of life sentence prisoners to whom the Crime (Sentences) Act 1997 s 28 applies. As to the nature of the test see PARA 621 ante.

24 Criminal Justice Act 1991 s 44A(6) (as added: see note 20 supra).

UPDATE

623 Recall of short term and long term prisoners

TEXT AND NOTES--Replaced in relation to any prisoner who has been released on licence under the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237-268), revoke his licence and recall him to prison: s 254(1). A person recalled may make written representations with respect to his recall and must be informed of the reasons for it: s 254(2). If a person on licence is recalled, he can be detained and if at large he is to be treated as unlawfully at large: s 254(6). Section 254 does not apply to offenders recalled under s 255 (see PARA 624): s 254(7) (amended by Criminal Justice and Immigration Act 2008 s 29(1)).

Where a prisoner has already made written representation challenging his recall to prison, but there is a material change of circumstances, the prisoner is entitled to make further representations: *R (on the application of Francis) v Secretary of State for the Home Department*; *R (on the application of Clarke) v Secretary of State for the Home Department* [2004] EWHC 2143 (Admin), [2005] 1 WLR 186.

See also Criminal Justice Act 1991 s 50A (added by Criminal Justice and Immigration Act 2008 s 32(1)) (prisoners recalled under Criminal Justice Act 2003 s 254). For transitional provisions and savings see Criminal Justice and Immigration Act 2008 Sch 27 para 12. See *R (on the application of Young) v Secretary of State for Justice* [2009] EWHC 2675 (Admin), [2009] All ER (D) 20 (Nov).

The Secretary of State has the power to recall to custody, under the 2003 Act s 254, a prisoner released on licence before the coming into force of s 254: *R (on the application of Buddington) v Secretary of State for the Home Department* [2006] EWCA Civ 280, [2006] 1 WLR 843. See also *R (on the application of Ramsden) v Secretary of State for the Home Department* [2006] All ER (D) 167 (Dec); and PARA 624.

On a reference under the 2003 Act s 255B(4), 255C(4) or 255D(1), the Board must either (1) fix a date, which must be within one year of its decision, for the person's release, or (2) determine the reference by making no recommendation as to his release: s 256(1), (2) (amended by the Criminal Justice and Immigration Act 2008 ss 29(3), 30(2), (3)). Where a date is fixed under head (1), the Secretary of State must release the person on licence on that date: 2003 Act s 256(4). See further s 256A (added by Criminal Justice and Immigration Act 2008 s 30(6)).

The Board has the power to decide whether to recommend release, not merely to review the Secretary of State's reasons for recall: *R (on the application of Gulliver) v Parole Board* [2007] All ER (D) 63 (Jul), CA.

The common law duty of procedural fairness does not require the Parole Board to hold an oral hearing in every case where a determinate sentence prisoner resists recall: *R (on the application of West) v Parole Board*; *R (on the application of Smith) (No 2) v Parole Board* [2005] UKHL 1, [2005] 1 WLR 350.

See also *R (on the application of Sim) v Parole Board* [2003] EWCA Civ 1845, (2003) Times, 2 January.

See further 2003 Act ss 255A-255D (added by Criminal Justice and Immigration Act 2008 s 29(2)), which make further provision with respect to release of prisoners after recall. For transitional provisions and savings see Criminal Justice and Immigration Act 2008 Sch 27 para 11. For transitory modifications see Criminal Justice and Immigration Act 2008 (Transitory Provisions) Order 2008, SI 2008/1587.

The fact that a prisoner who has been released on licence has been charged with a criminal offence is not by itself sufficient grounds for revoking the licence on the basis that the prisoner is at a risk of reoffending: *R (on the application of Broadbent) v Parole Board* (2005) Times, 22 June.

NOTE 7--See *R (on the application of Miah) v Secretary of State for the Home Department* [2004] EWHC 2569 (Admin), [2005] ACD 133; *Roberts v Secretary of State for the Home Department* [2005] All ER (D) 382 (Nov), CA.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/ (ii) Recall to Prison/624. Recall of short term prisoners on breach of curfew condition.

624. Recall of short term prisoners on breach of curfew condition.

If it appears to the Secretary of State¹, as regards a person released on a home detention curfew licence²: (1) that he has failed to comply with the curfew condition³; (2) that his whereabouts can no longer be electronically monitored at the place for the time being specified in that condition⁴; or (3) that it is necessary to do so in order to protect the public from serious harm from him⁵, the Secretary of State may, if the curfew condition is still in force, revoke the licence and recall the person to prison⁶. A person whose licence is so revoked⁷: (a) may make representations in writing with respect to the revocation⁸; and (b) on his return to prison, must be informed of the reasons for the revocation and of his right to make representations⁹.

The Secretary of State, after considering any representations so made or any other matters, may cancel a revocation under this provision¹⁰. On the revocation under this provision of a person's licence¹¹, he is liable to be detained in pursuance of his sentence and, if at large, is deemed to be unlawfully at large¹².

1 As to the Secretary of State see PARA 505 ante.

2 Licence under the Criminal Justice Act 1991 s 34A(3) (as added) (see PARA 614 ante): see s 38A(1) (as added: see note 3 infra).

3 Ibid s 38A(1)(a) (s 38A added by the Crime and Disorder Act 1998 s 100(2)). In the Criminal Justice Act 1991 s 38A (as added), 'the curfew condition' has the same meaning as in s 37A (as added) (see PARA 614 ante): see s 38A(6) (as so added).

4 Ibid s 38A(1)(b) (as added: see note 3 supra).

5 Ibid s 38A(1)(c) (as added: see note 3 supra).

6 Ibid s 38A(1) (as added: see note 3 supra).

7 Ibid s 38A(2) (as added: see note 3 supra).

8 Ibid s 38A(2)(a) (as added: see note 3 supra).

9 Ibid s 38A(2)(b) (as added: see note 3 supra).

10 Ibid s 38A(3) (as added: see note 3 supra). Where the revocation of a person's licence is so cancelled the person must be treated for the purposes of s 34A(2)(f) (as added) (see PARA 614 note 3 head (6) ante) and s 37(1B) (as added) (see PARA 627 post) as if he had not been recalled to prison under this provision: s 38A(4) (as so added).

11 See note 2 supra.

12 Criminal Justice Act 1991 s 38A(5) (as added: see note 3 supra).

UPDATE

624 Recall of short term prisoners on breach of curfew condition

TEXT AND NOTES--Replaced. The Secretary of State may revoke the licence of a person released on licence under the Criminal Justice Act 2003 s 246 (see PARA 614) and recall him to prison if he has failed to comply with a licence condition or if his whereabouts

can no longer be electronically monitored: s 255(1). A person whose licence is revoked may make written representations about the revocation and must be informed of the reasons for it when he returns to prison: s 255(2). The Secretary of State, after considering any representations, may cancel a revocation and, for the purposes of s 246, the licence is taken not to have been revoked: s 255(3). On the revocation of a person's licence under s 246, he may be detained and, if at large, is to be treated as being unlawfully at large: s 255(5). The fact that the powers under s 255 may be exercised does not preclude the use of the powers under s 254 (see PARA 623): *R (on the application of Ramsden) v Secretary of State for the Home Department* [2006] All ER (D) 167 (Dec).

For guidance on factors to be borne in mind by Secretary of State when exercising power to revoke home detention curfew licence, see *R (on the application of Davies) v Secretary of State for the Home Department* (2000) Independent, 23 November, CA.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/ (ii) Recall to Prison/625. Return to prison following conviction during currency of sentence.

625. Return to prison following conviction during currency of sentence.

Where a short term¹ or long term prisoner² has been released from prison³ and: (1) before the date on which he would (but for his release) have served his sentence in full, he commits an offence punishable with imprisonment⁴; and (2) whether before or after that date, he is convicted of that offence ('the new offence')⁵, the court by or before which such a person is convicted of the new offence may, whether or not it passes any other sentence on him, order him to be returned to prison⁶. He may be ordered to return for the whole or any part of the period which: (a) begins with the date of the order⁷; and (b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in heads (1) and (2) above⁸.

However, a magistrates' court: (i) does not have power to order such a person to be returned to prison for a period of more than six months⁹; but (ii) subject to the Criminal Justice and Public Order Act 1994¹⁰, may commit him in custody or on bail to the Crown Court to be dealt with under the following provision¹¹.

Where a person is so committed to the Crown Court, the Crown Court may order him to be returned to prison for the whole or any part of the period which begins with the date of the order, and is equal in length to the period between the date on which the new offence was committed and the date mentioned in heads (1) and (2) above¹².

The period for which such a person is ordered¹³ to be returned to prison¹⁴: (A) must be taken to be a sentence of imprisonment for the purposes of Part II of the Criminal Justice Act 1991¹⁵; (B) must, as the court may direct, either be served before and be followed by, or be served concurrently with, the sentence imposed for the new offence¹⁶; and (C) in either case, must be disregarded in determining the appropriate length of that sentence¹⁷.

Where the new offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it must be taken for the purposes of this provision to have been committed on the last of those days¹⁸.

For the purposes of any enactment conferring rights of appeal in criminal cases, any such order¹⁹ made with regard to any person must be treated as a sentence passed on him for the offence for which the sentence referred to in heads (1) and (2) above was passed²⁰.

As from a day to be appointed, provision is made empowering the court to detain in secure accommodation any person who is subject to a detention and training order²¹ and who, after his release but before the term of the order expires, commits a further offence which would be punishable with imprisonment²².

1 For the meaning of 'short term prisoner' see PARA 617 note 2 ante.

2 For the meaning of 'long term prisoner' see PARA 617 note 3 ante.

3 Ie under the Criminal Justice Act 1991 Pt II (ss 32-51) (as amended) (see PARAS 614-615, 617, 620 ante): see s 40(1).

4 Ibid s 40(1)(a). As to persons serving extended sentences see s 44 (substituted by the Crime and Disorder Act 1998 s 59, 120(1), Sch 9 para 12(1), (7)); and the Crime and Disorder Act 1998 s 58. See further PARA 617 ante.

5 Criminal Justice Act 1991 s 40(1)(b).

6 Ibid s 40(2). As to the imposition of a sentence for the new offence to run consecutively to a period of return to imprisonment see *R v Lowe* [1999] 3 All ER 762, CA.

7 Criminal Justice Act 1991 s 40(2)(a).

8 Ibid s 40(2)(b). As to the release of a prisoner who is subject to an order see PARA 617 ante. As to fine defaulters and contemnors see s 45 (amended by the Crime and Disorder Act 1998 ss 119, 120, Sch 8 para 88, Sch 9 para 12, Sch 10). The Criminal Justice Act 1991 s 40 (as amended) does not apply in relation to an existing prisoner or licensee: Sch 12 para 8(3).

9 Ibid s 40(3)(a).

10 Ie the Criminal Justice and Public Order Act 1994 s 25: see the Criminal Justice Act 1991 s 40(3)(b) (as amended: see note 11 infra).

11 Ibid s 40(3)(b) (amended by the Crime and Disorder Act 1998 s 106, Sch 7 para 43(1); and the Criminal Justice and Public Order Act 1994 s 168(1), (2), Sch 9 para 47, Sch 10 para 67). The Criminal Justice Act 1991 s 40(3)(b) must not be taken to confer on the magistrates' court a power to commit the person to the Crown Court for sentence for the new offence, but this is without prejudice to any such power conferred on the magistrates' court by any other enactment: s 40(3B) (added by the Crime and Disorder Act 1998 s 106, Sch 7 para 43(2)).

12 Criminal Justice Act 1991 s 40(3A) (added by the Crime and Disorder Act 1998 Sch 7 para 43(2)).

13 Ie under the Criminal Justice Act 1991 s 40(2) or (3A) (as added): s 40(4) (as amended: see note 14 infra).

14 Ibid s 40(4) (amended by the Crime and Disorder Act 1998 Sch 7 para 43(3)).

15 Criminal Justice Act 1991 s 40(4)(a) (as amended: see note 14 supra). The text refers to Pt II (ss 32-51) (as amended).

16 Ibid s 40(4)(b) (as amended: see note 14 supra).

17 Ibid s 40(4)(c) (as amended: see note 14 supra).

18 Ibid s 40(5) (added by the Crime and Disorder Act 1998 Sch 8 para 85).

19 Ie as is mentioned in the Criminal Justice Act 1991 s 40(2) or (3A) (as added: see note 12 supra).

20 Ibid s 40(6) (added by the Crime and Disorder Act 1998 Sch 8 para 85).

21 See PARAS 628, 656 post.

22 See the Crime and Disorder Act 1998 s 78, in force as from a day to be appointed under s 121. At the date at which this volume states the law, no order had been made bringing this provision into force.

UPDATE

625 Return to prison following conviction during currency of sentence

TEXT AND NOTES 3-20--1991 Act s 40, consolidated in the Powers of Criminal Courts (Sentencing) Act 2000 s 116, repealed: Criminal Justice Act 2003 Sch 32 para 116, Sch 37 Pt 7.

NOTE 4--1998 Act s 58, consolidated in 2000 Act ss 85, 161(2), (3), repealed: 2003 Act s 303(d)(ii), Sch 37 Pt 7.

NOTE 6--See *R v Blades* (1999) Times, 13 October, CA.

NOTE 22--Day appointed: SI 1999/3426. 1998 Act s 78 now 2000 Act s 105.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/ (ii) Recall to Prison/626. Recall of life sentence prisoners and prisoners detained at Her Majesty's pleasure.

626. Recall of life sentence prisoners and prisoners detained at Her Majesty's pleasure.

If recommended to do so by the Parole Board¹ in the case of a life prisoner² who has been released on licence³, the Secretary of State⁴ may revoke his licence and recall him to prison⁵. The Secretary of State may revoke the licence of any life prisoner and recall him to prison without a recommendation by the Board, where it appears to him that it is expedient in the public interest to recall that person before such a recommendation is practicable⁶. A life prisoner recalled to prison under these provisions⁷:

- 154 (1) may make representations in writing with respect to his recall⁸; and
- 155 (2) on his return to prison, must be informed of the reasons for his recall and of his right to make representations⁹.

The Secretary of State must refer to the Board the case of (a) a life prisoner recalled following the recommendation of the Parole Board, who makes such representations¹⁰; and (b) a life prisoner who is recalled without a recommendation by the Board¹¹. Where on such a reference the Board directs¹² or recommends¹³ his immediate release on licence, the Secretary of State must give effect to the direction or recommendation¹⁴.

On the revocation of the licence of any life prisoner, he is liable to be detained in pursuance of his sentence and, if at large, is deemed to be unlawfully at large¹⁵.

1 As to the Parole Board see PARAS 618-619 ante.

In the case of a mandatory life sentence prisoner, in considering whether or not to recall the prisoner to prison the Board must comply with the directions issued to it under the Criminal Justice Act 1991 s 32(6) (as amended) (see PARA 618 ante). The directions require the Board to consider inter alia whether the licensee's continued liberty would present a risk to the safety of other persons or whether the licensee is likely to commit further imprisonable offences, the extent to which the licensee has failed to comply with the conditions of the licence or otherwise failed to co-operate with the supervising officer and whether the licensee is likely to comply with the conditions of the licence and agree to supervision if allowed to remain in the community. See also *R v Secretary of State for the Home Department, ex p Stafford* [1999] 2 AC 38, [1998] 4 All ER 7, HL; *R v Parole Board, ex p Watson* [1996] 2 All ER 641, [1996] 1 WLR 906, CA.

2 For the meaning of 'life prisoner' see PARA 621 note 4 ante.

3 Ie under the Crime (Sentences) Act 1997 Pt II Ch II (ss 28-34) (as amended) (see PARAS 621-622 ante).

4 As to the Secretary of State see PARA 505 ante.

5 Crime (Sentences) Act 1997 s 32(1).

6 Ibid s 32(2). In practice, in the case of discretionary life prisoners and prisoners detained at Her Majesty's pleasure, where the Secretary of State exercises this power, the prisoner's case is then referred to the Board for the decision to be reviewed on the papers. Any decision confirming the recall does not prejudice the prisoner's right to have his case referred to the Board under s 32(4)(b) (see the text and note 11 infra). As to the lawfulness of such administrative referrals see *R v Secretary of State for the Home Department, ex p Watson* [1996] 2 All ER 641, [1996] 1 WLR 906, CA.

7 Ie under the Crime (Sentences) Act 1997 s 32(1) or s 32(2); see s 32(3).

8 Ibid s 32(3)(a).

9 Ibid s 32(3)(b).

10 See *ibid* s 32(4)(a). A prisoner is entitled to have the lawfulness of a decision to recall him determined speedily by a court: see the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 5(4) (see PARA 504 ante). As to the requirements of a speedy determination see PARA 621 note 16 ante.

11 See the Crime (Sentences) Act 1997 s 32(4)(b). See also note 10 *supra*.

12 *Ibid* s 32(5)(a). In the case of discretionary life prisoners or detainees at Her Majesty's pleasure, although s 32 is silent on the test to be applied by the Board, that test is the same as is applied when the Board considers the case for the release of a prisoner under s 28 (as amended) (see PARA 621 ante): *R v Secretary of State for the Home Department, ex p Watson* [1996] 2 All ER 641, [1996] 1 WLR 906, CA. Thus it is for the prisoner to satisfy the Board that it is no longer necessary for the protection of the public that he be detained.

The procedure adopted by the Board in relation to recall reviews of discretionary life sentence prisoners and detainees at Her Majesty's pleasure is governed by the Parole Board Rules 1997: see r 19. As to those Rules see PARA 621 ante. The procedure is identical to that applicable in relation to cases considered under the Crime (Sentences) Act 1998 s 28(6), save that for any reference in the rules to the time by which an act must be done (save for the time within which the Board must communicate its decision to the parties), there is substituted a reference to such period of time as the chairman of the panel shall in each case determine, taking account of both the desirability of the Board reaching an early decision in the prisoner's case and the need to ensure fairness to the prisoner: Parole Board Rules r 19(a). Further, the information and reports which must be provided in relation to a recall hearing comprise: (1) the full name of the prisoner; (2) his age; (3) the prison in which he is detained and the details of other prisons in which he has been detained, and the date and reasons for transfer; (4) the date he was sentenced and details of the offence; (5) the previous convictions and parole history, if any, of the prisoner; (6) the details of any life sentence plan prepared for the prisoner which have been previously disclosed to him; (7) the details of any previous recalls of the prisoner including the reasons for such recalls and subsequent re-release on licence; (8) the statement of reasons for the most recent recall which was given to the prisoner under the Crime (Sentences) Act 1997 s 32(3)(b); (9) the details of any memorandum which the Board considered prior to making its recommendation for recall under s 39(1) or confirming the Secretary of State's decision to recall under s 32(2), including reasons why the Secretary of State considered it expedient in the public interest to recall that person before it was practicable to obtain a recommendation from the Board; (10) the reports considered by the Board prior to making its recommendation for recall under s 32(1) or its confirmation of the Secretary of State's decision to recall under s 32(2); and (11) any other relevant reports: Parole Board Rules 1997 rr 5, 19, Sch 2.

13 Crime (Sentences) Act 1997 s 32(5)(b). Once the Board has made its recommendation to the Secretary of State it becomes *functus officio*: *R v Secretary of State for the Home Department, ex p Evans* (2 November 1994, unreported), DC. See also, in relation to discretionary life sentence prisoners and detainees at Her Majesty's pleasure, *R v Parole Board, ex p Robinson* (29 July 1999, unreported).

In the case of a mandatory life sentence prisoner, if the Board wishes to await further developments (for example, the outcome of a criminal trial) before deciding whether or not to recommend the immediate release on licence of a recalled prisoner it must defer consideration of the case rather than make a recommendation which is subject to future developments or else, on the next reference to the Board, it will not enjoy the power to make a binding recommendation for immediate release: *R v Secretary of State for the Home Department, ex p de Lara* (22 March 1995, unreported), DC.

14 Crime (Sentences) Act 1997 s 32(5). 'Immediate' means what it says and so a direction which is subject to any condition not capable of immediate fulfilment will not bind the Secretary of State and the prisoner will fall to be dealt with under the normal release power (see PARA 622 ante): *R v Secretary of State for the Home Department, ex p Gunnell* [1984] Crim LR 170, (1983) Times, 3 November. See also, specifically in relation to mandatory life sentence prisoners, *R v Secretary of State for the Home Department, ex p de Lara* (22 March 1995, unreported), DC.

15 Crime (Sentences) Act 1997 s 32(6).

UPDATE

626 Recall of life sentence prisoners and prisoners detained at Her Majesty's pleasure

TEXT AND NOTES--The rule that the Secretary of State may recall a life sentence prisoner only on the recommendation of the Parole Board (except in certain circumstances) is removed; the Secretary of State may now recall such a person when he sees fit: 1997 Act s 32 (amended by Criminal Justice and Immigration Act 2008 s 31).

The 1997 Act s 32 is compatible with the right to liberty guaranteed by the European Convention on Human Rights art 5 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 127 et seq): *R (on the application of Hirst) v Secretary of State for the Home Department* [2006] EWCA Civ 945, [2006] 4 All ER 639.

TEXT AND NOTES 12-14--Words 'or recommends' and ' or recommendation' omitted: Crime (Sentences) Act 1997 s 32(5) (substituted by Criminal Justice Act 2003 Sch 32 para 84).

NOTE 12--Where the Parole Board fails to fix a recall hearing within the prescribed time limit of 55 days, as required by the Board's policy guidelines, a delay on the grounds of lack of resources cannot be justified and is unlawful: *R (on the application of Cooper) v Parole Board* (2007) Times, 17 May.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/(iii) Supervision/627. Duration and conditions of licences.

(iii) Supervision

627. Duration and conditions of licences.

Where a short term or long term prisoner¹ is released on licence², the licence must, subject to any revocation³, remain in force until the date on which he would, but for his release, have served three-quarters⁴ of his sentence⁵.

A person subject to a licence⁶ must comply with such conditions as may for the time being be specified in the licence, and the Secretary of State⁷ may make rules for regulating the supervision of any description of such persons⁸.

Such conditions may in the case of a short term prisoner released on licence⁹ whose sentence is for a term of less than 12 months, and must in any other case, include on the person's release conditions as to his supervision¹⁰ by: (1) a probation officer¹¹ appointed for or assigned to the petty sessions area within which the person resides for the time being¹²; or (2) where the person is under the age of 18 years, a member of a youth offending team established by the local authority within whose area the person resides for the time being¹³. The Secretary of State may not include on release, or subsequently insert, a condition in the licence of a long term prisoner, or vary or cancel any such condition, except after consultation with the Parole Board¹⁴.

Where a life prisoner¹⁵ is released on licence, the licence remains in force until his death, unless previously revoked¹⁶. A life prisoner subject to a licence must comply with such conditions (which must include on his release conditions as to his supervision by a probation officer)¹⁷ as may for the time being be specified in the licence¹⁸. The Secretary of State may not include on release, or subsequently insert, a condition in the licence of a life prisoner, or vary or cancel any such condition, except (a) in the case of the inclusion of a condition in the licence of a discretionary life prisoner or detainee at Her Majesty's pleasure¹⁹, in accordance with recommendations of the Parole Board; and (b) in any other case, after consultation with the Parole Board²⁰.

1 For the meaning of 'short term prisoner' see PARA 617 note 2 ante; and for the meaning of 'long term prisoner' see PARA 617 note 3 ante.

2 As to release on licence see PARA 617 ante.

3 I.e. under the Criminal Justice Act 1991 s 39(1), (2) (as amended) (see PARA 623 ante): see s 37(1) (as amended: see note 5 infra).

In relation to any prisoner whose sentence or any part of whose sentence was imposed for an offence committed before 1 January 1999, this provision is also subject to any suspension under s 38(2) (repealed with savings) (see PARA 623 ante): see s 37(1) (as originally enacted); Crime and Disorder Act 1998 s 120(1), Sch 9 para 12(1), (2)(b).

4 Where a prisoner whose sentence is for a term of 12 months or more is released on licence under the Criminal Justice Act 1991 s 33A(2) or s 34A(3) (both as added) (see PARAS 614, 617 ante), s 37(1) (as amended) has effect as if for the reference to three-quarters of his sentence there were substituted a reference to the difference between: (1) that proportion of his sentence; and (2) the duration of the curfew condition to which he is or was subject: s 37(1B) (added by the Crime and Disorder Act 1998 Sch 8 para 83(2)).

Where a prisoner is released on licence under the Criminal Justice Act 1991 s 33(3) or (3A) (s 33(3) as amended, s 33(3A) as added) (see PARA 617 ante), this provision has effect as if for the reference to three-quarters of his sentence there was substituted a reference to the whole of that sentence: see s 37(1A) (added by the Crime and Disorder Act 1998 s 104(2)). The Criminal Justice Act 1991 s 37(1A) (as so added) does not apply in relation

to a prisoner whose sentence, or any part of whose sentence, was imposed for an offence committed before 30 September 1998: see the Crime and Disorder Act 1998 Sch 9 para 13.

Where a prisoner whose sentence is for a term of less than 12 months is released on licence under the Criminal Justice Act 1991 s 34A(3) (as added: see PARA 614 ante) or s 36(1) (as amended: see PARA 615 ante), s 37(1) (as amended) has effect as if for the reference to three-quarters of his sentence there were substituted a reference to one-half of that sentence: s 37(2) (amended by the Crime and Disorder Act 1998 Sch 8 para 83(3)).

5 Criminal Justice Act 1991 s 37(1) (amended by the Crime and Disorder Act 1998 s 120(2), Sch 8 para 83(1), Sch 10). The Criminal Justice Act 1991 s 37(1) is subject to s 37(1A), (1B), (2) (s 37(1A), (1B) as added, s 37(2) as amended): see s 37(1) (as so amended). There are special provisions relating to persons committed to prison or detained (1) in default of a payment of a sum adjudged to be paid by a conviction; or (2) for contempt of court or any kindred offence: see s 45(1), (4) (amended by the Crime and Disorder Act 1998 Sch 8 para 88, Sch 9 para 12(1), (2)(b), (c), Sch 10).

6 *Ie* under the Criminal Justice Act 1991 Pt II (ss 32-51) (as amended): see s 37(4) (as amended: see note 8 *infra*).

7 As to the Secretary of State see PARA 505 ante.

8 Criminal Justice Act 1991 s 37(4) (amended by the Crime and Disorder Act 1998 Sch 8 para 83(4)). The power to make rules under this provision is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: Criminal Justice Act 1991 s 37(7). At the date at which this volume states the law no such rules had been made.

Section 37(4) does not have effect in relation to life prisoners: see the Crime (Sentences) Act 1997 (Commencement No 2 and Transitional Provisions) Order 1997, SI 1997/2200, art 2. As to the provisions applicable to life prisoners see the text and notes 15-20 *infra*. In relation to any prisoner whose sentence or any part of whose sentence was imposed for an offence committed before 1 January 1999, the conditions mentioned in the text include on his release conditions as to his supervision by a probation officer: see the Criminal Justice Act 1991 s 37(4) (as originally enacted); and the Crime and Disorder Act 1998 Sch 9 para 12(1), (2)(c).

9 *Ie* under the Criminal Justice Act 1991 s 34A (as added) (see PARA 614 ante): see s 37(4A) (as added: see note 10 *infra*).

10 *Ibid* s 37(4A) (added by the Crime and Disorder Act 1998 Sch 8 para 83(5)).

11 In relation to a person under the age of 22 years who is released on licence under the Criminal Justice Act 1991 Pt II, this provision has effect as if the reference to supervision by a probation officer included a reference to supervision by a social worker of a local authority social services department: s 43(5) (amended by the Crime and Disorder Act 1998 Sch 8 para 87(2)).

12 Criminal Justice Act 1991 s 37(4A)(a) (as added: see note 10 *supra*).

13 *Ibid* s 37(4A)(b) (as added: see note 10 *supra*).

14 *Ibid* s 37(5) (substituted by the Crime and Disorder Act 1998 Sch 8 para 83(6)). As to the Parole Board see PARAS 618-619 ante. For these purposes, the Secretary of State is treated as having consulted the Board about a proposal to include, insert, vary or cancel a condition in any case if he has consulted the Board about the implementation of proposals of that description generally or in that class of case: Criminal Justice Act 1991 s 37(6).

15 For the meaning of 'life prisoner' see PARA 621 note 4 ante.

16 *Ie* revoked under the Crime (Sentences) Act 1997 s 32(1), (2) (see PARA 626 ante): s 31(1).

17 The words in brackets are repealed in relation to certain areas as from 30 September 1998, and in relation to all areas as from a day to be appointed: *ibid* s 31(2) (amended by the Crime and Disorder Act 1998 Sch 8 para 131(1), Sch 10; and the Crime and Disorder Act 1998 (Commencement No 2 and Transitional Provisions) Order 1998, SI 1998/2327).

In relation to the areas in which that amendment is in force, the conditions to be specified must include on the prisoner's release conditions as to his supervision by (1) a probation officer appointed for or assigned to the petty sessions area within which the prisoner resides for the time being; (2) where the prisoner is under 22, a social worker of the social services department of the local authority within whose area the prisoner resides for the time being; or (3) where the prisoner is under 18, a member of a youth offending team: Crime (Sentences) Act 1997 s 31(2A) (added in relation to those areas as from 30 September 1998, and for all areas as from a day to be appointed, by the Crime and Disorder Act 1998 Sch 8 para 131(1); and the Crime and Disorder Act 1998 (Commencement No 2 and Transitional Provisions) Order 1998, SI 1998/2327).

In relation to a life prisoner who is liable to removal from the United Kingdom within the meaning given by the Criminal Justice Act 1991 s 46(3) (see PARA 620 note 7 ante), the Crime (Sentences) Act s 31(2) has effect as if s 31(2A) were omitted: s 31(6) (amended by the Crime and Disorder Act 1998 Sch 8 para 131(3); and the Crime and Disorder Act 1998 (Commencement No 2 and Transitional Provisions) Order 1998, SI 1998/2327).

18 Crime (Sentences) Act 1997 s 31(2) (as amended: see note 17 supra). The Secretary of State may make rules for regulating the supervision of any description of such persons: s 31(2). The power to make rules under s 31 (as amended) is exercisable by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament: s 31(5).

19 le a prisoner to whom *ibid* s 28 (as amended) applies: see PARA 621 ante.

20 *Ibid* s 31(3). For this purpose, the Secretary of State is to be treated as having consulted the Parole Board about a proposal to include, insert, vary or cancel a condition in any case if he has consulted the Board about the implementation of proposals of that description generally or in that class of case: s 31(4).

UPDATE

627-628 Supervision

As to monitoring following release on licence, see PARA 628A; and as to drug testing requirements, see PARA 628B.

627 Duration and conditions of licence

TEXT AND NOTES 1-14--See further 1991 Act ss 37(8), 37ZA (added by Criminal Justice and Immigration Act 2008 s 26(5)(b), (6)). For transitional provisions and savings see Sch 27 para 8.

TEXT AND NOTES 3-14, 17--1991 Act Pt II (ss 32-51) repealed: Criminal Justice Act 2003 s 303(a), Sch 37 Pt 7.

TEXT AND NOTE 5--1991 Act s 37(1) further amended: Criminal Justice and Immigration Act 2008 s 26(5)(a). For transitional provisions and savings see Sch 27 para 8.

NOTES 6-8--For a case concerning a challenge to the imposition of licence conditions, see *R (on the application of Carman) v Secretary of State for the Home Department* (2004) Times, 11 October.

TEXT AND NOTES 11, 12--1991 Act s 37(4A)(a) amended, s 43(5) further amended: SI 2008/912.

NOTE 16--1997 Act s 31(1) amended: Criminal Justice and Immigration Act 2008 Sch 28 Pt 2.

NOTE 17--1997 Act s 31(2A) amended: SI 2008/912.

TEXT AND NOTES 19, 20--For 'except ... with the Parole Board' read 'except in accordance with recommendations of the Parole Board': Crime (Sentences) Act 1997 s 31(3) (amended by 2003 Act Sch 32 para 83(2)).

NOTE 20--1997 Act s 31(4) repealed: 2003 Act Sch 32 para 83(3), Sch 37 Pt 8.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/(iii) Supervision/628. Supervision of young offenders after release.

628. Supervision of young offenders after release.

Where an offender under the age of 22 years is released from a term of detention in a young offender institution¹ or under the Children and Young Persons Act 1933², he must be under the supervision of a probation officer or a social worker of a local authority social services department³. The supervision period ends on the offender's 22nd birthday if it has not ended before⁴. Where the offender is released otherwise than on licence⁵, the supervision period begins on his release and ends three months from his release⁶. However, where the offender is released on licence⁷ and the licence expires less than three months from his release, the supervision period begins on the expiry of the licence and ends three months from his release⁸.

Where a person is under supervision, he must comply with such requirements, if any, as may for the time being be specified in a notice from the Secretary of State⁹. A person who without reasonable excuse fails to comply with such a requirement is liable on summary conviction: (1) to a fine not exceeding level 3 on the standard scale¹⁰; or (2) to an appropriate custodial sentence¹¹ for a period not exceeding 30 days¹², but is not liable to be dealt with in any other way¹³.

As from a day to be appointed, the court has power to make a detention and training order in respect of an offender aged under 18¹⁴, providing for a period of detention and training followed by a period of supervision¹⁵.

1 As to young offender institutions see PARAS 643-656 post; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85 et seq.

2 Ie under the Children and Young Persons Act 1933 s 53 (as amended) (punishment of grave crimes) (see SENTENCING AND DISPOSITION OF OFFENDERS): see the Criminal Justice Act 1991 s 65(1).

3 Ibid s 65(1). As to the amendment of this provision, and the addition of s 65(1A), (1B) in relation to certain areas, see the Crime and Disorder Act 1998 s 119, Sch 8 para 94; and the Crime and Disorder Act 1998 (Commencement No 2 and Transitional Provisions) Order 1998, SI 1998/2327, art 3, Sch 1.

4 Criminal Justice Act 1991 s 65(2).

5 Ie under ibid Pt II (ss 32-51) (as amended): see s 65(3).

6 Ibid s 65(3).

7 See note 5 supra.

8 Criminal Justice Act 1991 s 65(4).

9 Ibid s 65(5). As to the Secretary of State see PARA 505 ante.

10 Ibid s 65(6)(a). As to the standard scale see PARA 517 note 4 ante.

11 'Appropriate custodial sentence' means: (1) a sentence of imprisonment, if the offender has attained the age of 21 years when he is sentenced; and (2) a sentence of detention in a young offender institution, if he has not attained that age: ibid s 65(7). A person released from a custodial sentence passed under s 65(6) is not liable to a period of supervision in consequence of his conviction under that provision, but his conviction does not prejudice any liability to supervision to which he was previously subject, and that liability accordingly continues until the end of the supervision period: s 65(8).

12 Ibid s 65(6)(b).

13 Ibid s 65(6).

14 See the Crime and Disorder Act 1998 s 73(1), (2), in force as from a day to be appointed under s 121(2). At the date at which this volume states the law, no order had been made bringing s 73 into force.

15 See *ibid* s 73(3). The terms of such an order may not exceed the maximum term of imprisonment which could be imposed for the offence by the Crown Court: s 73(6). Subject to that, the term of an order is to be 4, 6, 8, 10, 12, 18 or 24 months: s 73(5). See further PARA 656 post.

UPDATE

627-628 Supervision

As to monitoring following release on licence, see PARA 628A; and as to drug testing requirements, see PARA 628B.

628 Supervision of young offenders after release

TEXT AND NOTES 1-13--1991 Act s 65 further amended: SI 2008/912, SI 2009/2054.

TEXT AND NOTE 3--Words 'social services department' omitted: Criminal Justice Act 1991 s 65(1) (amended by the Children Act 2004 Sch 5 Pt 4) (in force in relation to England: SI 2005/394). 1991 Act s 65(1B) amended: 2004 Act Sch 5 Pt 4 (in force in relation to England: SI 2005/394).

NOTE 3--Amendments and additions now in force in all areas: SI 2000/924. See also 1991 Act s 65(5A)-(5E), (9), (10) (added by the Criminal Justice and Court Services Act 2000 s 63). Drug testing requirements on release on licence apply to persons aged 14 or over on whom a sentence of imprisonment has been imposed: see s 64; and PARA 628B.

TEXT AND NOTE 5--1991 Act Pt II (ss 32-51) repealed: Criminal Justice Act 2003 s 303(a), Sch 37 Pt 7.

NOTES 14, 15--1998 Act s 73 now Powers of Criminal Courts (Sentencing) Act 2000 ss 100, 101(1), (2).

TEXT AND NOTE 14--Day appointed: SI 1999/3426.

NOTE 15--Where a detention and training order consecutive to one already being served is imposed, the aggregate length of the two orders need not correspond with a period specified in s 73(5): *R v Norris* [2001] 1 Cr App Rep (S) 401, CA.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/(iii) Supervision/628A. Conditions as to monitoring following release on licence.

628A. Conditions as to monitoring following release on licence.

Where a particular sentence of imprisonment¹ has been imposed on a person and² the Secretary of State is required to, or may, release³ the person from prison⁴, and the release is required to be, or may be, subject to conditions⁵, those conditions may include conditions for securing the electronic monitoring of his compliance with any other conditions of his release⁶ and conditions⁷ for securing the electronic monitoring of his whereabouts⁸, and the Secretary of State may make rules about the conditions that may by virtue of these provisions be imposed⁹.

The sentences of imprisonment to which these provisions apply are:

- 156 (1) a detention and training order¹⁰;
- 157 (2) a sentence of detention in a young offender institution¹¹;
- 158 (3) a sentence of detention at Her Majesty's pleasure¹²;
- 159 (4) a sentence of detention for a specified period imposed on an offender aged under 18 for a serious offence¹³;
- 160 (5) a sentence of custody for life¹⁴;
- 161 (6) a sentence of detention for life or for public protection¹⁵;
- 162 (7) an extended sentence for a violent or sexual offence¹⁶;
- 163 (8) a sentence of detention imposed on an offender aged under 18 convicted by the Court Martial of certain serious offences or murder¹⁷; and
- 164 (9) a detention and training order imposed by the Court Martial or the Service Civilian Court¹⁸.

1 See TEXT AND NOTES 10-18.

2 Ie by virtue of any enactment.

3 References to 'release' include temporary release: Criminal Justice and Court Services Act 2000 s 70(3).

4 Ibid s 62(1)(a). 'Prison' is construed according to the type of sentence which has been imposed (as to which see TEXT AND NOTES 10-18): s 62(5).

5 Ibid s 62(1)(b). The conditions may be conditions of a licence or any other conditions, however expressed: s 62(1)(b).

6 Ibid s 62(2)(a). In relation to a prisoner released under the Criminal Justice Act 2003 s 246 (power to release prisoners on licence before required to do so: see PARA 614), the monitoring referred to in the Criminal Justice and Court Services Act 2000 s 62(2)(a) does not include the monitoring of his compliance with conditions imposed under the Criminal Justice Act 2003 s 253 (curfew condition: see PARA 614): Criminal Justice and Court Services Act 2000 s 62(3) (s 62(3) substituted, s 62(5)(f) added, by the Criminal Justice Act 2003 s 304, Sch 32 paras 133, 136).

7 Ie conditions otherwise than for the purpose of securing the person's compliance with other conditions of his release: Criminal Justice and Court Services Act 2000 s 62(2)(b).

8 Ibid s 62(2)(b).

9 Ibid s 62(4).

10 Ibid s 62(5)(a). As to detention and training orders see the Powers of Criminal Courts (Sentencing) Act 2000 s 100 et seq; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 89 et seq.

11 Criminal Justice and Court Services Act 2000 s 62(5)(b). As to sentences of detention in a young offender institution see the Powers of Criminal Courts (Sentencing) Act 2000 ss 96-98; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85 et seq.

12 Criminal Justice and Court Services Act 2000 s 62(5)(c). As to sentences of detention at Her Majesty's pleasure see the Powers of Criminal Courts (Sentencing) Act 2000 s 90; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 81.

13 Criminal Justice and Court Services Act 2000 s 62(5)(d). As to these sentences see the Powers of Criminal Courts (Sentencing) Act 2000 s 91; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78.

14 Criminal Justice and Court Services Act 2000 s 62(5)(e). As to sentences of custody for life see the Powers of Criminal Courts (Sentencing) Act 2000 ss 93, 94; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 79.

15 Criminal Justice and Court Services Act 2000 s 62(5)(f) (as added: see NOTE 6). As to such sentences see the Criminal Justice Act 2003 s 226; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 82-83.

16 Criminal Justice and Court Services Act 2000 s 62(5)(f) (as added: see NOTE 6). As to such sentences see the Criminal Justice Act 2003 s 228; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84. The sentences referred to in heads (6) and (7) include one passed as a result of the Armed Forces Act 2006 s 221 or 222; Criminal Justice and Court Services Act 2000 s 62(5)(f) (s 62(5)(f) amended, s 62(5)(g), (h) added by the Armed Forces Act 2006 Sch 16 para 184).

17 Criminal Justice and Court Services Act 2000 s 62(5)(g) (as added: see NOTE 16). As to such sentences see the Armed Forces Act 2006 ss 209 and 218; and ARMED FORCES vol 2(2) (Reissue) PARA 431).

18 Criminal Justice and Court Services Act 2000 s 62(5)(h) (as added: see NOTE 16). As to such sentences see the Armed Forces Act 2006 s 211; and ARMED FORCES vol 2(2) (Reissue) PARA 432.

UPDATE

627-628 Supervision

As to monitoring following release on licence, see PARA 628A; and as to drug testing requirements, see PARA 628B.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/(iii) Supervision/628B. Drug testing requirements following release on licence.

628B. Drug testing requirements following release on licence.

Where the Secretary of State releases¹ from prison² a person³ on whom a particular sentence of imprisonment⁴ has been imposed and the release is subject to conditions⁵, then for the purpose of determining whether the person is complying with any of the conditions they may include the requirement⁶ that the person must provide, when instructed⁷ to do so by an officer of a local probation board⁸, an officer of a provider of probation services, or a person authorised by the Secretary of State, any sample mentioned in the instruction for the purpose of ascertaining whether he has any specified Class A drug⁹ in his body¹⁰. The sentences of imprisonment to which these provisions apply are:

- 165 (1) a detention and training order¹¹;
- 166 (2) a sentence of detention in a young offender institution¹²;
- 167 (3) a sentence of detention at Her Majesty's pleasure¹³;
- 168 (4) a sentence of detention for a specified period imposed on an offender aged under 18 for a serious offence¹⁴;
- 169 (5) until a day to be appointed, a sentence of custody for life¹⁵;
- 170 (6) as from a day to be appointed, a sentence of detention for life or for public protection¹⁶;
- 171 (7) as from a day to be appointed, an extended sentence for a violent or sexual offence¹⁷;
- 172 (8) a sentence of detention imposed on an offender aged under 18 convicted by the Court Martial of certain serious offences or murder¹⁸; and
- 173 (9) a detention and training order imposed by the Court Martial or the Service Civilian Court¹⁹.

Until a day to be appointed²⁰ these provisions apply where the Secretary of State releases from prison a person aged 18 or over on whom an applicable sentence of imprisonment has been imposed for a trigger offence²¹; as from that day these provisions apply where the Secretary of State releases from prison any person aged 14 or over on whom an applicable sentence of imprisonment has been imposed²² and a responsible officer²³ is of the opinion that the offender has a propensity to misuse specified Class A drugs²⁴ and that the misuse by the offender of any specified Class A drug caused or contributed to any offence of which he has been convicted, or is likely to cause or contribute to the commission of further offences²⁵.

1 As to the meaning of 'release' see PARA 628A NOTE 3.

2 'Prison' is construed according to the type of sentence which has been imposed (as to which see TEXT AND NOTES 11-19): Criminal Justice and Court Services Act 2000 s 64(5).

3 As to the persons to whom these provisions are applicable see TEXT AND NOTES 20-25.

4 See TEXT AND NOTES 11-19.

5 Criminal Justice and Court Services Act 2000 s 64(1)(b). The conditions may be conditions of a licence or any other conditions, however expressed: 64(1)(b).

6 Ibid s 64(2).

7 The function of giving such an instruction is to be exercised in accordance with guidance given from time to time by the Secretary of State; and regulations made by the Secretary of State may regulate the provision of samples in pursuance of such an instruction: *ibid* s 64(4).

The Secretary of State's power to make regulations, rules or an order under the Criminal Justice and Court Services Act 2000 (unless it is a power to make an order under s 19, s 20 or s 23) is exercisable by statutory instrument (s 76(1), (2) (s 76(1) amended by the Constitutional Reform Act 2005 s 146, Sch 18 Pt 2)), and may be exercised so as to make different provision for different purposes or different areas (Criminal Justice and Court Services Act 2000 s 76(3)). The power includes power to make any supplementary, incidental or consequential provision (s 76(4)(a)) and any transitory, transitional or saving provision (s 76(4)(b)) which the Minister exercising the power considers necessary or expedient. An order making any provision by virtue of s 10 or s 70(2) (s 76(5)(a)), or making any provision by virtue of s 77(2) which adds to, replaces or omits any part of the text of an Act (s 76(5)(b)), may only be made if a draft of the statutory instrument containing the order has been laid before and approved by resolution of each House of Parliament. Any other statutory instrument made in exercise of a power to which s 76 applies (other than one containing an order revoking an order made by virtue of s 10 or made by virtue only of s 80) is subject to annulment in pursuance of a resolution of either House of Parliament (s 76(6), (7)).

8 For the meaning of 'local probation board' see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 737.

9 For the meaning of 'Class A drug' see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 239 (definition applied by *ibid* s 70(1)). For these purposes 'specified', in relation to a Class A drug, means specified by an order made by the Secretary of State (s 70(1)): the relevant order is the Criminal Justice (Specified Class A Drugs) Order 2001, SI 2001/1816.

10 Criminal Justice and Court Services Act 2000 s 64(3) (amended by SI 2008/912). As from a day to be appointed a person under the age of 17 years may not be required by virtue of these provisions to provide a sample otherwise than in the presence of an appropriate adult: Criminal Justice and Court Services Act 2000 s 64(4A) (s 64(4A), (5)(f), (6) added, as from a day to be appointed, by the Criminal Justice Act 2003 s 266). For these purposes 'appropriate adult', in relation to a person aged under 17, means: (1) his parent or guardian or, if he is in the care of a local authority or voluntary organisation, a person representing that authority or organisation; (2) a social worker of a local authority; or (3) if no person falling within head (1) or head (2) is available, any responsible person aged 18 or over who is not a police officer or a person employed by the police: s 64(6) (as so added; amended by the Children Act 2004 s 64, Sch 5 Pt 4)).

11 Criminal Justice and Court Services Act 2000 s 64(5)(a). As to detention and training orders see the Powers of Criminal Courts (Sentencing) Act 2000 s 100 et seq; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 89 et seq.

12 Criminal Justice and Court Services Act 2000 s 64(5)(b). As to sentences of detention in a young offender institution see the Powers of Criminal Courts (Sentencing) Act 2000 ss 96-98; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85 et seq.

13 Criminal Justice and Court Services Act 2000 s 64(5)(c). As to sentences of detention at Her Majesty's pleasure see the Powers of Criminal Courts (Sentencing) Act 2000 s 90; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 81.

14 Criminal Justice and Court Services Act 2000 s 64(5)(d). As to these sentences see the Powers of Criminal Courts (Sentencing) Act 2000 s 91; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 78.

15 Criminal Justice and Court Services Act 2000 s 64(5)(e) (repealed as from a day to be appointed by the Criminal Justice Act 2003 s 332, Sch 37 Pt 7). As to sentences of custody for life see the Powers of Criminal Courts (Sentencing) Act 2000 ss 93, 94; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 79.

16 Criminal Justice and Court Services Act 2000 s 64(5)(f) (as prospectively added: see NOTE 10). As to such sentences see the Criminal Justice Act 2003 s 226; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 82-83.

17 Criminal Justice and Court Services Act 2000 s 64(5)(f) (as prospectively added: see NOTE 10). As to such sentences see the Criminal Justice Act 2003 s 228; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 84. The sentences referred to in heads (6) and (7) include one passed as a result of the Armed Forces Act 2006 s 221 or 222: Criminal Justice and Court Services Act 2000 s 64(5)(f) (s 64(5)(f) amended, s 64(5)(g), (h) added by the Armed Forces Act 2006 Sch 16 para 185.

18 Criminal Justice and Court Services Act 2000 s 62(5)(g) (as added: see NOTE 17). As to such sentences see the Armed Forces Act 2006 ss 209 and 218; and ARMED FORCES vol 2(2) (Reissue) PARA 431).

19 Criminal Justice and Court Services Act 2000 s 62(5)(h) (as added: see NOTE 17). As to such sentences see the Armed Forces Act 2006 s 211.

20 As from a day to be appointed the Criminal Justice and Court Services Act 2000 s 64(1)(a) is substituted, and s 64(1)(aa) is added, by the Criminal Justice Act 2003 s 266.

21 Criminal Justice and Court Services Act 2000 s 64(1)(a) (prospectively substituted: see NOTE 20). A 'trigger offence' is (1) an offence under the Theft Act 1968 s 1 (theft), s 8 (robbery), s 9 (burglary), s 10 (aggravated burglary), s 12 (taking motor vehicle or other conveyance without authority), s 12A (aggravated vehicle-taking), s 22 (handling stolen goods) or s 25 (going equipped for stealing, etc); (2) an offence (if committed in respect of a specified Class A drug) under the Misuse of Drugs Act 1971 s 4 (restriction on production and supply of controlled drugs), s 5(2) (possession of controlled drug) or s 5(3) (possession of controlled drug with intent to supply); (3) an offence under the Fraud Act 2006 s 1 (fraud), s 6 (possession etc of articles for use in frauds), or s 7 (making or supplying articles for use in frauds); (4) an offence under the Criminal Attempts Act 1981 s 1(1) if (a) committed in respect of an offence under the Theft Act 1968 s 1, 8, 9, 15 or 22; or (b) committed under the Fraud Act 2006 s 1; and (5) an offence under the Vagrancy Act 1824 s 3 (begging) or s 4 (persistent begging): Criminal Justice and Court Services Act 2000 s 70(1), Sch 6 (Sch 6 amended by the Fraud Act 2006 Sch 1 para 32, Sch 3, SI 2004/1892 and SI 2007/2171). The Secretary of State may by order amend the Criminal Justice and Court Services Act 2000 Sch 6 so as to add, modify or omit any description of offence: s 70(2).

22 Ibid s 64(1)(a) (prospectively substituted: see NOTE 20).

23 For these purposes 'responsible officer' means either an officer of a local probation board, an officer of a provider of probation services, or a member of a youth offending team (in relation to an offender aged under 18) or an officer of a local probation board or an officer of a provider of probation services (in relation to an offender aged 18 or over): ibid s 64(6) (prospectively added: see NOTE 20) (amended by SI 2008/912).

24 Criminal Justice and Court Services Act 2000 s 64(1)(aa)(i) (prospectively added: see NOTE 20).

25 Ibid s 64(1)(aa)(ii) (prospectively added: see NOTE 20).

UPDATE

627-628 Supervision

As to monitoring following release on licence, see PARA 628A; and as to drug testing requirements, see PARA 628B.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/ (iv) Discharge/629. Formalities.

(iv) Discharge

629. Formalities.

The Secretary of State¹ may make such payments to or in respect of persons released or about to be released from prison as he may, with Treasury consent, determine².

On his release from prison, a prisoner may be provided, where necessary, with suitable and adequate clothing³.

In general, a discharged prisoner is not subject to any legal disabilities as such⁴, but there are restrictions upon his possession of firearms for a certain period after release⁵.

1 As to the Secretary of State see PARA 505 ante.

2 Prison Act 1952 s 30 (substituted by the Criminal Justice Act 1967 s 66(3)).

3 See the Prison Rules 1999, SI 1999/728, r 23(6); and PARA 575 ante.

4 As to disqualifications consequent on conviction see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1818.

5 As to the possession and sale of firearms by persons convicted of crime see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 672-673.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/ (iv) Discharge/630. Mentally disordered prisoners.

630. Mentally disordered prisoners.

Prisoners suffering from mental disorder may at the direction of the Secretary of State¹ be transferred to hospital for treatment². Determinate sentence prisoners who have been transferred to hospital for treatment become subject to the operation of the Mental Health Act 1983 in respect of their transfer back to prison or discharge from hospital³. While detained in hospital, discretionary life sentence prisoners and prisoners detained at Her Majesty's pleasure cannot simultaneously avail themselves of the procedural mechanisms for discharging patients and those for releasing such prisoners⁴: it is a matter for the Secretary of State to determine, in respect of each prisoner, which procedure should apply⁵. In relation to mandatory life sentence prisoners who are transferred to hospital, the practice of the Secretary of State is to release them on licence⁶, rather than by conditional or absolute discharge from hospital⁷.

1 As to the Secretary of State see PARA 505 ante.

2 See the Mental Health Act 1983 ss 47, 48, 49 (s 47 as amended); and MENTAL HEALTH vol 30(2) (Reissue) PARA 535 et seq.

3 See *ibid* ss 47, 49, 50. There may be restrictions on the discharge of such a person: see MENTAL HEALTH vol 30(2) (Reissue) PARAS 537-538.

4 As to the release of discretionary life sentence prisoners and those detained at Her Majesty's pleasure see the Crime (Sentences) Act 1997 s 28 (as amended); and PARA 621 ante.

5 See *R v Secretary of State for the Home Department, ex p Hickey* [1995] QB 43, [1995] 1 All ER 479, CA. In practice, the case of such a prisoner is normally considered by a mental health review tribunal and, if the tribunal recommends discharge, a hearing before the Parole Board is convened. As to the Parole Board see PARAS 618-619 ante.

6 *Ie* under the Crime (Sentences) Act 1997 s 29(1): see PARA 622 ante.

7 *Ie* under the Mental Health Act 1983: see MENTAL HEALTH. The policy has been held to be lawful, as it is a policy intended to ensure that the mandatory life sentence, imposed for life, cannot be countermanded: see *R v Secretary of State for the Home Department, ex p S* (1992) Times, 19 August.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(8) RELEASE, DISCHARGE AND DEATH/(v) Death/631. Death.

(v) Death

631. Death.

If a prisoner dies in prison, the governor, if he knows his or her address, must at once inform the prisoner's spouse or next of kin, and also any person whom the prisoner may reasonably have asked should be informed¹. The governor must immediately give notice of the death of a prisoner to the coroner in whose jurisdiction the prison lies², to the Board of Visitors³ and to the Secretary of State⁴. The coroner must hold an inquest in respect of a person who has died in prison⁵.

1 See the Prison Rules 1999, SI 1999/728, r 22(1); and PARA 580 ante.

2 See CORONERS vol 9(2) (2006 Reissue) PARA 952.

3 As to the Board of Visitors see PARAS 511-513 ante.

4 See the Prison Rules 1999, SI 1999/728, r 22(2). As to the Secretary of State see PARA 505 ante.

5 See the Coroners Act 1988 s 8(1); and CORONERS vol 9(2) (2006 Reissue) PARA 939.

UPDATE

631 Death

TEXT AND NOTE 3--Reference to Board of Visitors now to independent monitoring board (see PARA 511): SI 1999/728 r 22(2) (amended by SI 2008/597).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(9) PARTICULAR CLASSES OF PRISONERS/632. Appellants and persons awaiting sentence.

(9) PARTICULAR CLASSES OF PRISONERS

632. Appellants and persons awaiting sentence.

No distinction is drawn between appellants and persons awaiting sentence and other convicted prisoners. The facilities that such prisoners require in order to pursue an appeal or to consult with legal advisers on the mitigation of any punishment are those which apply generally¹.

¹ See PARAS 606-607 ante.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(9) PARTICULAR CLASSES OF PRISONERS/633. Political prisoners.

633. Political prisoners.

Until 1972 a special prisoner status was acknowledged on political grounds, although within a narrow ambit. Persons convicted of sedition, seditious conspiracy or seditious libel were for the most part treated as unconvicted prisoners¹. However, since the offence of sedition and its associated offences have fallen into disuse, there seemed no reason for maintaining the special rules, and they were accordingly revoked².

A 'special category' status for convicted prisoners was introduced into Northern Ireland in 1972 if the prisoner claimed political motivation for his crime and was acceptable to a compound leader at the Maze or Magilligan prison; but it was abandoned in respect of those convicted from 1 March 1976³.

Although no special status is accorded to political prisoners in England and Wales, many of those who might justifiably claim that their convictions were for politically motivated crimes are in practice classified as category A prisoners⁴, since their escape would be highly dangerous to the public or the police, or to the security of the state.

Members of Parliament are not privileged from arrest and imprisonment in relation to criminal matters or under emergency legislation⁵. Conviction for treason⁶ or corrupt electoral practices⁷ or imprisonment for more than 12 months⁸ disqualifies a person for membership of the House of Commons. A member of Parliament serving a sentence of imprisonment is in no different position from any other person so detained in regard to his treatment in prison and is to be accorded no special advantages by virtue of his membership⁹. No question of parliamentary privilege is involved in the treatment by the prison authorities of a member of Parliament detained in prison, which is a matter for the discretion of those authorities within the rules¹⁰, although an imprisoned member of Parliament who is unconvicted can in practice carry out many of his duties as a representative of his constituents¹¹.

1 See the Prison Rules 1964, SI 1964/388, r 64 (revoked). As to sedition see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 371 et seq. As to the privileges accorded unconvicted prisoners under the Prison Rules 1999, SI 1999/728, see rr 20(5), 23(1), 31(5), 35(1), 43(1).

2 See note 1 *supra*.

3 Prisoners convicted before that date continued to benefit from the special category.

4 As to category A prisoners see PARA 537 *ante*.

5 Erskine May's Parliamentary Practice (22nd Edn, 1997) pp 103-105, 107, 148.

6 See the Forfeiture Act 1870 s 2 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1818; PARLIAMENT vol 78 (2010) PARA 902.

7 See ELECTIONS AND REFERENDUMS.

8 See PARA 562 *ante*; and PARLIAMENT vol 78 (2010) PARA 902.

9 *Report from the Committee of Privileges, Rights of Honourable Members Detained in Prison* (HC Paper (1969-70) no 185) PARA 3.

10 *Report from the Committee of Privileges, Rights of Honourable Members Detained in Prison* (HC Paper (1969-70) no 185) PARA 4.

11 *Report from the Committee of Privileges, Rights of Honourable Members Detained in Prison* (HC Paper (1969-70) no 185) PARA 3.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(9) PARTICULAR CLASSES OF PRISONERS/634. Women prisoners.

634. Women prisoners.

Women prisoners must normally be kept separate from male prisoners¹. Subject to any conditions he thinks fit, the Secretary of State² may permit a woman prisoner to have her baby with her in prison, and everything necessary for the baby's maintenance and care may be provided there³. Otherwise, the provisions of the Prison Rules 1999 apply to male and female prisoners alike.

Pregnant women who attend hospital for ante-natal appointments or for delivery during the course of their sentence are to have any restraints applied for the purposes of transport to hospital removed upon arrival, unless they present a particularly high risk of escape. The prisoner must normally be escorted to hospital by two female officers who must not, unless the prisoner requests it, be present in the delivery room nor when intimate examinations are taking place⁴.

In the case of female prisoners over the age of 21 who are detained in a young offender institution⁵ instead of a prison, reasonable facilities must be afforded them, if they wish to improve their education, by class teaching or private study⁶. Such prisoners are also to be given the opportunity to participate in physical education for at least one hour a week, if circumstances reasonably permit⁷. If weather permits, and subject to the need to maintain good order and discipline, they are to be given the opportunity to spend time in the open air at least once every day, for such period as may be reasonable in the circumstances⁸.

1 Prison Rules 1999, SI 1999/728, r 12(1). Cf the Prison Rules 1964, SI 1964/388, r 9(1) (revoked), which imposed a duty at all times to keep women prisoners separate from male prisoners. There is no requirement that prisons or parts of prisons for women must be under the control of female staff. In practice, male and female prisoners are kept entirely separate in different institutions, save for Durham, Risley, Winchester and Highpoint prisons, and Low Newton remand centre, which each have wings dedicated to female prisoners in an otherwise male prison. As to women's prisons see further PARA 641 post.

2 As to the Secretary of State see PARA 505 ante.

3 Prison Rules 1999, SI 1999/728, r 12(2). There are currently four mother and baby units which can accommodate 64 children in total: *Prison Service Annual Report and Accounts* (HC Paper (1997-98) no 998). Those at Holloway and New Hall allow babies to remain with their mothers up to the age of 9 months, and those at Styal and Askam Grange, up to the age of 18 months: *Prison Service's Annual Report and Accounts* (HC Paper (1997-98) no 998). As to the criteria applied in determining whether a mother should be admitted to a unit see the Prison Service booklet on *Mother and Baby Units* (1996). See also the United Nations Convention on the Rights of the Child (1989) (TS 44 (1992); Cm 1976) Art 3(1), which requires that in relation to all actions by the state authorities the best interests of the child is to be a primary consideration. See further *R v Secretary of State for the Home Department, ex p Hickling and JH (a minor)* [1986] 1 FLR 543, [1986] Fam Law 140. This case concerned the removal of a mother from a mother and baby unit where the governor considered that her behaviour was having a detrimental effect on her baby and others in the unit; and the removal was held to be lawful in view of the interests of security and order in the unit, and also due to the fact that the governor had consulted a paediatrician and given the mother several opportunities to improve her behaviour. Today far more emphasis is likely to be placed on the interests of the child; and significant procedural protections are required both in relation to the determination of applications to come onto such a unit and in relation to the decision whether to remove women from such a unit with the resulting separation from their babies: *Mother and Baby Units* (1996). See also Application 28555/95 *Togher v United Kingdom* [1998] EHRR 636, EComHR, which declared admissible the applicant's complaint that her enforced separation from her 10 day old baby, following her arrest, constituted inhuman treatment contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 3 and an unjustifiable interference with her right to family life under Art 8. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 149-155.

At the date at which this volume states the law a review of the principles, policies and procedures for mothers and babies in prison is being conducted by the Prison Service: see *Prison Service Annual Report and Accounts* (HC Paper (1998-99) no 748).

4 Prison Service Security Manual para 60.25 (amended by Prison Service Instruction 05/97). This provision was introduced as a result of the public concern following disclosure that women were giving birth while shackled to prison officers. As to restraints generally see PARA 595 ante.

5 As to young offender institutions see PARAS 643-656 post.

6 See the Young Offender Institution Rules 1988, SI 1988/1422, r 35(4). As to education in young offender institutions see PARA 650 post.

7 See *ibid* r 38(2A) (added by SI 1996/1662). As to physical education in young offender institutions see PARA 650 post.

8 See the Young Offender Institution Rules 1988, SI 1988/1422, r 38(4) (substituted by SI 1996/1662).

UPDATE

634 Women prisoners

NOTE 3--Prison Service Order No 4801, which allows babies to remain with their mothers in prison only until they reach the age of 18 months is not unlawful but, when implementing the policy, regard should be had to the particular facts in each individual case: *R (on the application of P) v Secretary of State for the Home Department*; *R (on the application of Q) v Secretary of State for the Home Department* [2001] EWCA Civ 1151, [2001] 1 WLR 2002. See *CF v Secretary of State for the Home Department* [2004] EWHC 111 (Fam), [2004] 1 FCR 577 (failure to properly involve baby in decision making process infringed right to family life under European Convention on Human Rights art 8).

As to the correct procedure to follow when considering the exclusion of a mother from a mother and baby unit on the basis of disruptive behaviour, see *R (on the application of CD) v Secretary of State for the Home Department* [2003] All ER (D) 88 (Jan), ECtHR.

NOTE 6--SI 1988/1422 r 35(4) now Young Offender Institution Rules 2000, SI 2000/3371, r 38(4), see further PARA 645-655

NOTE 7--SI 1988/1422 r 38(2A) now SI 2000/3371 r 41(3).

NOTE 8--SI 1988/1422 r 38(4) now SI 2000/3371 r 41(5).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(9) PARTICULAR CLASSES OF PRISONERS/635. Prisoners under sentence of death.

635. Prisoners under sentence of death.

The death penalty having been abolished for all offences, no special provision is made for the treatment and detention of prisoners under sentence of death¹.

¹ The death penalty for murder was abolished by the Murder (Abolition of Death Penalty) Act 1965 s 1(1), as confirmed by resolutions of both Houses of Parliament in December 1969. It was abolished in respect of treason and piracy in 1998 by the Crime and Disorder Act 1998 s 36. See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 4.

UPDATE

635 Prisoners under sentence of death

NOTE 1--Crime and Disorder Act 1998 s 36 amended: Statute Law (Repeals) Act 2008.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(9) PARTICULAR CLASSES OF PRISONERS/636. Young offenders.

636. Young offenders.

No court may pass a sentence of imprisonment on a person under 21 years of age or commit such a person to prison for any reason¹. Offenders under 15 years of age who are ordered to be detained are usually located in local authority accommodation² unless they are aged between 12 and 14 years and have been made the subject of a secure training order³, in which case they may be located in a secure training centre⁴.

The majority of offenders over the age of 15 years are sentenced to detention in a young offender institution⁵ and, together with those sentenced to custody for life⁶, they are normally detained in young offender institutions⁷. The Secretary of State may from time to time direct that such offenders are to be detained in a prison or remand centre instead of a young offender institution, but, if they are under 18 years of age at the time of the direction, only for temporary purposes⁸.

In respect of all young offenders sentenced to a period of detention, save those who are detained pursuant to a secure training order, the Secretary of State may direct that they are to be treated as if they had been sentenced to imprisonment for the same term⁹. He may only do so where:

- 174 (1) the offender has attained the age of 21 years¹⁰; or
- 175 (2) the offender has attained the age of 18 years and has been reported by the Board of Visitors as exercising a bad influence on the other inmates or behaving in a disruptive manner to the detriment of those inmates¹¹.

Where such a direction is given the portion of the term which has already been served is to be deemed to have been a portion of imprisonment¹².

Offenders under 21 years of age who are remanded in custody while awaiting trial or sentence, can be remanded to a prison¹³. Fine defaulters and contemnors aged 18 to 20 years who are ordered to be detained¹⁴ are to be detained:

- 176 (a) in a remand centre¹⁵;
- 177 (b) in a young offender institution¹⁶; or
- 178 (c) in any place in which a person aged 21 years or over could be imprisoned or detained for default in payment of a fine or any other sum of money¹⁷,

as the Secretary of State may from time to time direct¹⁸.

Where a person under the age of 21 years is detained in prison, to the extent that circumstances reasonably permit:

- 179 (i) provision is to be made for his physical education within the normal working week, as well as evening and weekend physical recreation, the physical education activities being such as foster personal responsibility and the prisoner's interests and skills and encourage him to make good use of his leisure on release¹⁹;
- 180 (ii) arrangements are to be made for each such prisoner who is a convicted prisoner to participate in physical education for two hours each week on average²⁰.

Where the young offender detained in prison is of compulsory school age²¹, arrangements must be made for his participation in education or training courses for at least 15 hours a week within the normal working week²².

1 See the Criminal Justice Act 1982 s 1(1); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11. See also the United Nations Convention on the Rights of the Child (1989) Art 37 (see PARA 634 note 3 ante), which provides that every detained person under the age of 18 years is to be separated from adults unless it is considered in the child's best interests not to do so. This Convention has been ratified by the government, subject to a reservation that it is not to apply where there is a lack of suitable accommodation or adequate facilities for a particular individual in any institution: see Cm 1976 (1992). See also the United Nations Beijing Rules: Standard Minimum Rules for the Administration of Juvenile Justice, GA Resn 40/33 (1985); and the Rules for the Protection of Juveniles deprived of their Liberty, GA Resn 45/113 (1990). As to international standards generally see PARA 504 ante.

2 As to the detention outside Prison Service establishments of offenders under 17 years following a criminal conviction see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1404. Such children are those ordered to be detained at Her Majesty's pleasure under the Children and Young Persons Act 1933 s 53(1) (as amended) or for either an indeterminate or a determinate period under s 53(3) (as amended). In respect of children or young persons sentenced under s 53(3) (as amended), it is the practice, save in exceptional circumstances, to detain young offenders who have reached the age of 15 years in young offender institutions: Prison Service Circular Instruction 81/1987. See also *R v Secretary of State for the Home Department, ex p J and B* (1998) Times, 2 December, CA, where the practice was held to be lawful notwithstanding the Secretary of State's duty to have regard to the welfare of the child or young person. As to young offender institutions see PARAS 643-656 post. An enhanced unit for offenders convicted under the Children and Young Persons Act 1933 s 53 (as amended) who are under 18 years old, providing an appropriate regime and level of care, came into operation at Huntercombe Young Offender Institution in April 1999, and, at the date at which this volume states the law, two more units are in preparation at Hollerley Bay and Castington Young Offender Institutions: see *Prison Service Annual Report and Accounts* (HC Paper (1998-99) no 748).

3 See the Criminal Justice and Public Order Act 1994 ss 1-4 (s 4 as amended). As from a day to be appointed these provisions are repealed by the Crime and Disorder Act 1998 ss 73(7)(b), 120(2), Sch 10. At the date at which this volume states the law no such date had been appointed and the Crime and Disorder Act 1998 ss 73-79 are not in force. For transitional provisions see s 116. Sections 73-79 create a new custodial sentence called a detention and training order. For offenders under the age of 18 years this will replace the sentence of detention in a young offender institution (see the Criminal Justice Act 1982 s 1B (as added and amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85 et seq) and the secure training order (see the Criminal Justice and Public Order Act 1994 ss 1-4 (as amended): see the Crime and Disorder Act 1998 s 73(7). Provision is also made to impose detention and training orders on children under the age of 12 (see s 73(2)(b)), though there is currently no intention so to do. Where a detention and training order is imposed, the period of detention and training is to be served in such secure accommodation as may be determined by the Secretary of State or by such other person as may be authorised by him for that purpose: s 75(1). Secure accommodation means (1) a secure training centre; (2) a young offender institution; (3) accommodation provided by a local authority for the purpose of restricting the liberty of children and young persons; (4) accommodation provided for that purpose under the Children Act 1989 s 82(5) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 158); or (5) such other accommodation provided for the purpose of restricting liberty as the Secretary of State may direct: Crime and Disorder Act 1998 s 75(7). See also Prison Service Order 4950, 'Regimes for Prisoners under 18 years old'. As to young offender institutions see PARAS 643-656 post; and as to secure training centres see PARA 657 et seq post. As to the Secretary of State see PARA 505 ante.

4 As to secure training centres see PARA 657 et seq post.

5 See the Criminal Justice Act 1982 s 1A (as added and amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85 et seq. As to the replacement of the sentence of detention in a young offender institution by a detention and training order for offenders under 18 years of age see note 3 supra.

6 See *ibid* s 8 (as amended) (detention of persons aged between 18, 19 and 20 years who are convicted of murder); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 79.

7 See *ibid* s 1C(1) (as added and amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85 et seq. As to accommodation in a young offender institution see the Young Offender Institution Rules 1988, SI 1988/1422 (as amended); and PARA 645 et seq post. See also note 3 supra.

8 See the Criminal Justice Act 1982 s 1C(2) (as added and amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85 et seq. As to temporary transfers see *R v Accrington Youth Court, ex p Flood* [1998] 2 All ER 313, [1998] 1 WLR 156; and the United Nations Convention on the Rights of the Child (1989) Art 37 (see note 1 supra). As to transfers to prison see PARA 644 post. As to remand centres see PARA 701 post.

- 9 See the Criminal Justice Act 1982 s 13(1), (6) (amended by virtue of the Criminal Justice Act 1988 s 123(6), Sch 8 Pt I para 2, Pt II; and the Criminal Justice Act 1982 s 13(6) amended by the Criminal Justice Act 1991 s 100, Sch 11 para 33).
- 10 Criminal Justice Act 1982 s 13(1) (as amended: see note 9 supra).
- 11 Ibid s 13(2).
- 12 Ibid s 13(4). As to the duty to release prisoners who have served specified portions of their sentences see PARAS 617, 620 et seq ante.
- 13 Ibid s 1(2). For powers of remand in a magistrate's court see, in particular, the Magistrates Courts Act 1980 ss 5(1), 10(4) (as amended), 15(2), 18(4) (as amended), 30(1), 55(5); and MAGISTRATES.
- 14 Ie under the Criminal Justice Act 1982 s 9 (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 11): see s 12(10) (amended by virtue of the Criminal Justice Act 1988 s 123(6), Sch 8 Pt I para 1, Pt II).
- 15 Criminal Justice Act 1982 s 12(10)(a).
- 16 Ibid s 12(10)(b), (c) (amended by virtue of the Criminal Justice Act 1988 Sch 8 Pt I para 1, Pt II).
- 17 Criminal Justice Act 1982 s 12(10)(d).
- 18 Ibid s 12(10) (amended by virtue of the Criminal Justice Act 1988 Sch 8, Pt I para 1). The Criminal Justice Act 1982 s 12 (as amended) is without prejudice to the Prison Act 1952 s 22(2)(b) (as amended) (removal to hospital etc: see PARA 582 ante): Criminal Justice Act 1982 s 12(11)(a).
- 19 Prison Rules 1999, SI 1999/728, r 29(2)(a).
- 20 Ibid r 29(2)(b).
- 21 Ie as defined in the Education Act 1996 s 8 (see EDUCATION vol 15(1) (2006 Reissue) PARA 15).
- 22 Prison Rules 1999, SI 1999/728, r 32(4). See also PARA 576 ante.

UPDATE

636 Young offenders

NOTE 1--1982 Act s 1(1) now Powers of Criminal Courts (Sentencing) Act 2000 s 89(1).

NOTE 2--1933 Act s 53 (as amended) now Powers of Criminal Courts (Sentencing) Act 2000 s 89(1).

NOTE 3--Day appointed for repeal of 1994 Act ss 1-4 and coming into force of 1998 Act ss 73-79 was 1 April 2000: SI 1999/3426. 1998 Act ss 73-79 consolidated in the Powers of Criminal Courts (Sentencing) Act 2000. For destination of consolidated provisions see table, CRIMINAL LAW, EVIDENCE AND PROCEDURE.

TEXT AND NOTES 5-8--1982 Act ss 1A, 1C, 8, consolidated in the Powers of Criminal Courts (Sentencing) Act 2000 ss 93-98, prospectively repealed: Criminal Justice and Court Services Act 2000 Sch 8.

NOTE 7--SI 1988/1422 now Young Offender Institution Rules 2000, SI 2000/3371, see further PARA 645-655.

NOTES 9-12--1982 Act s 13 (as amended) now Powers of Criminal Courts (Sentencing) Act 2000 s 99 (amended by Offender Management Act 2007 Sch 3 para 9; and Armed Forces Act 2006 Sch 16 para 164).

NOTE 13--1982 Act s 1(2) now Powers of Criminal Courts (Sentencing) Act 2000 s 89(2).

NOTES 14-18--1982 Act s 12(10) now Powers of Criminal Courts (Sentencing) Act 2000 s 108(5).

NOTE 14--1982 Act s 9 now Powers of Criminal Courts (Sentencing) Act 2000 s 108.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(9) PARTICULAR CLASSES OF PRISONERS/637. Mentally disordered prisoners.

637. Mentally disordered prisoners.

Persons suffering from mental disorders and convicted before the criminal courts of a criminal offence, in lieu of any punishment by imprisonment, may be made subject to a hospital order under the Mental Health Act 1983¹, with or without restrictions². However, mentally disordered persons may be found in prisons where they are committed on remand for trial and where they are committed on conviction other than to a hospital under the Mental Health Act 1983, in which case the Secretary of State³ has power to transfer any mentally disordered person to a hospital⁴. Where the mental disorder is in the nature of a personality disorder and the prisoner appears to be amenable to therapeutic treatment, he may be transferred to the therapeutic community at Grendon⁵. Where he is located in a close supervision centre, he may be transferred to the centre at Hull⁶.

The prison medical officer must report to the governor on the case of any prisoner whose health is likely to be injuriously affected by continued imprisonment or any conditions of imprisonment⁷.

The medical officer or a medical practitioner is to pay special attention to any prisoner whose mental condition appears to require it, and make any special arrangements which appear necessary for his supervision or care⁸.

1 As to hospital orders see MENTAL HEALTH vol 30(2) (Reissue) PARA 491 et seq.

2 As to orders restricting the discharge of a person suffering from a mental disorder see MENTAL HEALTH vol 30(2) (Reissue) PARAS 496-501.

3 As to the Secretary of State see PARA 505 ante.

4 As to the power to direct a transfer to hospital see the Mental Health Act 1983 ss 47-49 (s 47 as amended); para 630 ante; and MENTAL HEALTH vol 30(2) (Reissue) PARAS 535-537. See also the Statistics of Mentally Disordered Offenders in England and Wales 1996 (Home Office Statistical Bulletin 2/98).

5 See PARA 642 post.

6 See PARA 642 post. As to close supervision centres see PARA 593 ante. See also the Prison Service Operating Standards on Close Supervision Centres.

7 See the Prison Rules 1999, SI 1999/728, r 21(1); and PARA 580 ante. As to the medical officer and medical services generally see PARA 580 et seq ante.

8 See *ibid* r 21(2); and PARA 580 ante.

UPDATE

637 Mentally disordered prisoners

TEXT AND NOTE 7--Reference to 'medical officer' now to 'registered medical practitioner': SI 1999/728 r 21(1) (amended by SI 2005/3437). For the meaning of 'registered medical practitioner' see PARA 580.

TEXT AND NOTE 8--SI 1999/728 r 21(2) omitted: SI 2005/3437.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/2. CONVICTED PRISONERS/(9) PARTICULAR CLASSES OF PRISONERS/638. Military prisoners.

638. Military prisoners.

The Prison Act 1952 does not affect naval, military or air force prisons¹. A military prisoner transferred to a civil prison is to be treated as if he were confined under a like sentence of a civil court². Governors of civil prisons are under a duty to receive military prisoners duly sent to that prison under the relevant regulations or rules and to confine them until the sentence is completed or the prisoner is discharged³. Governors are also under a duty to keep a person who is in military custody or detention in custody for up to seven days on receipt of a written order signed by that person's commanding officer⁴, and to do likewise in respect of a person in military custody charged or about to be charged with an offence under the Army Act 1955 or the Air Force Act 1955⁵. Governors must also receive any person duly committed to their prison by a magistrates' court as being a deserter or absentee from the regular forces and detain him until he is delivered into military custody⁶. No action will lie against prison officers or anyone else in respect of anything done in pursuance of a military sentence of imprisonment or detention if the action would have been lawful but for a defect in a warrant or other instrument issued in connection with the sentence⁷.

1 See the Prison Act 1952 s 53(1); and PARA 542 note 1 ante.

2 See the Army Act 1955 s 125(1); the Air Force Act 1955 s 125(1); the Naval Discipline Act 1957 s 83; and ARMED FORCES.

3 See the Army Act 1955 s 129(1); the Air Force Act 1955 s 129(1); the Naval Discipline Act 1957 s 107(1) (a); and ARMED FORCES.

4 See the Army Act 1955 s 129(2); the Air Force Act 1955 s 129(2); the Naval Discipline Act 1957 s 107(1) (b); and ARMED FORCES.

5 See the Army Act 1955 s 202(1); the Air Force Act 1955 s 202(1); and ARMED FORCES.

6 See the Army Act 1955 s 190(1); the Air Force Act 1955 s 190(1); the Naval Discipline Act 1957 s 107(1) (c); and ARMED FORCES.

7 See the Army Act 1955 s 142; and the Air Force Act 1955 s 142. See also ARMED FORCES.

UPDATE

638 Military prisoners

TEXT AND NOTES--Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 replaced: Armed Forces Act 2006. As to the duty of governors of civil prisons to receive military prisoners, see s 299.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(1) TYPES OF PRISON ESTABLISHMENTS FOR ADULTS/639. Closed prisons.

3. PARTICULAR ESTABLISHMENTS

(1) TYPES OF PRISON ESTABLISHMENTS FOR ADULTS

639. Closed prisons.

Although there is no statutory requirement for the classification of prisons, every adult prison is classified¹. Closed prisons for male prisoners are classified as local, dispersal, Category B training prisons, and Category C training prisons.

Local prisons are usually sited in centres of urban population, with a moderately high degree of security. They primarily serve local courts, performing remand functions². They also provide for the allocation and categorisation of convicted prisoners, but those convicted prisoners sentenced to imprisonment for sentences which are too short to allow sufficient time for reallocation will remain in the local prison throughout their sentence. Prisoners serving short sentences can also elect to remain at the local prison as retained labour.

Dispersal prisons are so called as they accommodate Category A prisoners by dispersing them amongst category B prisoners in several prisons providing relatively greater security than other establishments³. Category B training prisons provide a less strict regime with less internal security⁴. Category C training establishments are less secure still and make up the largest part of the male prison estate⁵.

1 As to classification of prisons see PARA 530 ante; and as to categorisation of prisoners see PARA 537 ante.

2 As to remand centres see PARA 701 post.

3 See The Regime for Long Term Prisoners in Conditions of Maximum Security, the Report of the Advisory Council on the Penal System (1968). At the date at which this volume states the law there are six dispersal prisons: Full Sutton, Frankland, Long Lartin, Wakefield, Whitemoor and Belmarsh. Category A prisoners who are classified as exceptional risk will be held in special secure units within the dispersal prison system. There are currently special secure units at Belmarsh, Full Sutton and Whitemoor. As to the special regime which operates in special secure units see Prison Service Operating Standards for Special Secure Units. As to special secure units see also PARA 530 ante.

4 The nature of the regimes varies greatly and each category B training prison applies its own criteria for selection of inmates. Kingston, for example, only takes life sentence prisoners.

5 As to open prisons see PARA 640 post.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(1) TYPES OF PRISON ESTABLISHMENTS FOR ADULTS/640. Open prisons.

640. Open prisons.

Open prisons are suitable only for those prisoners who present minimal security risks and who are unlikely to abuse the trust reposed in giving them a high degree of freedom of movement within and without the prison. The conditions in an open prison provide the closest match with the outside world. For life sentence prisoners whose release depends upon establishing that they no longer present a danger to the public, the open prison provides an important means of testing¹. Prisoners in open prisons are likely to spend a great deal of time outside the prison on temporary licence in order to attend educational courses, work in the local community or re-establish contact with the community into which they will be released².

In addition to open prisons, the prison estate includes a small number of resettlement prisons and pre-release employment scheme hostels³. Long term prisoners are transferred to the former towards the end of their sentences to facilitate their reintegration into the outside community and the finding of employment. Prisoners in these establishments spend most of their days outside the establishment on temporary licences. Facilities within the prisons are, in consequence, relatively limited. Pre-release employment scheme hostels are attached to Maidstone, Wormwood Scrubs and Wakefield Prisons. Mandatory life sentence prisoners are frequently required to spend a period of between six and nine months in a pre-release employment scheme hostel as a final prelude to release. It is less usual for discretionary life sentence prisoners or determinate sentence prisoners to be allocated to such hostels. Apart from curfews in the evenings, prisoners are permitted to spend their time away from the hostel in search of or at work. The hostels provide very low level staffing and little by way of support or supervision.

1 See 'Directions to the Parole Board under s 32(6) of the Criminal Justice Act 1991 -Release of Mandatory Life Sentence Prisoners'. As to the release of mandatory life sentence prisoners see PARA 622 ante. As to the Secretary of State see PARA 505 ante; and as to the Parole Board see PARAS 618-619 ante.

2 As to temporary release see PARA 612 et seq ante.

3 See Lifer Manual, Prison Service Order 4700 para 4.4, 4.11.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(1) TYPES OF PRISON ESTABLISHMENTS FOR ADULTS/641. Women's prisons.

641. Women's prisons.

Women's prisons¹ are either closed² or open³, with no differential security gradations among the closed prisons, save that Holloway Prison accommodates Category A prisoners⁴ while on remand and Durham Prison, H wing⁵, accommodates those who have been convicted. Female young offenders are held in designated parts of adult prisons⁶.

1 As to open and closed prisons for men see PARAS 639-640 ante. As to women prisoners see also PARA 634 ante. Facilities within women's prisons have been considered to fall significantly short of those in the male prison estate. For a review of the particular problems in the female prison estate see 'Women in Prison: A Thematic Review by HM Chief Inspector of Prisons' (Home Office, 1997). Part of the government's response to the criticism in this report has been the establishment of a Directorate of Regimes and within this an Assistant Director for Women responsible for the Women's Regime Group: see *Prison Service Annual Report and Accounts* (HC Paper (1997-98) no 998).

As to the provision of mother and baby units see PARA 634 ante.

2 Closed prisons for women are Brockhill, Bullwood Hall, Cookham Wood, Durham (H wing), Eastwood Park, Foston Hall, Highpoint, Holloway, Low Newton, New Hall, Risley, Styal and Winchester. In practice, the regimes resemble those of category B and C male prisons. Holloway accommodates women prisoners suffering with psychiatric problems. New Hall takes female life sentence prisoners in the early stages of their sentence.

Due to the rapidly rising prisoner population, Send and Low Newton are to become solely female prisons, and Durham is to extend its existing female wing: *Prison Service Annual Report and Accounts* (HC Paper (1998-99) no 748).

3 Open prisons for women are Askham Grange, Drake Hall and East Sutton Park.

4 As to categorisation of prisoners see PARA 537 ante.

5 H wing is a female wing in an otherwise all male prison.

6 As to young offender institutions see PARAS 643-656 post.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(1) TYPES OF PRISON ESTABLISHMENTS FOR ADULTS/642. Therapeutic prison.

642. Therapeutic prison.

There is one prison, Grendon, which exclusively treats personality disorders within a prison setting. Prisoners from other penal establishments may, if the medical officer¹ approves, be transferred during the currency of a prison sentence for therapeutic treatment². In addition, the close supervision centre at Hull only takes prisoners suffering from mental disorder³.

1 As to the medical officer see PARA 580 ante.

2 See Prisons and the Prisoner (Her Majesty's Stationery Office, 1977) PARAS 45, 48; and Marshall 'A reconviction study of HMP Grendon therapeutic community' (Home Office, 1997) (Home Office research findings no 53).

3 As to close supervision centres see PARA 593 ante. See also Prison Service Operating Standards for Close Supervision Centres (1998).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(i) Young Offender Institutions/643. Establishment of young offender institutions.

(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS

(i) Young Offender Institutions

643. Establishment of young offender institutions.

The Secretary of State¹ may provide young offender institutions for the detention of those sentenced to detention in a young offender institution or to custody for life².

Certain statutory provisions relating to prisons and prisoners³ apply also to remand centres and young offender institutions and persons detained in them⁴. Those provisions relate to:

- 181 (1) the appointment and functions of the Chief Inspector of Prisons⁵;
- 182 (2) Boards of Visitors⁶;
- 183 (3) photographing and measuring⁷;
- 184 (4) removal for the purposes of an appeal or other proceedings or for medical treatment⁸; and
- 185 (5) the acquisition of land⁹.

Other provisions of the Prison Act 1952¹⁰ apply to remand centres and young offender institutions as well as to persons detained in them, subject to such adaptations and modifications as may be specified in rules made by the Secretary of State¹¹. Consequently, so far as the provisions of that Act apply to such institutions, references in the Act to imprisonment include references to detention in those institutions¹².

The Secretary of State has like powers as in the case of prisons to enter into contracts for the provision of all or parts of young offender institutions and for the performance of specified functions in respect of such institutions¹³.

¹ As to the Secretary of State see PARA 505 ante.

² Prison Act 1952 s 43(1)(aa) (s 43 substituted by the Criminal Justice Act 1982 s 11; s 43(1)(aa) added by the Criminal Justice Act 1988 s 170(1), Sch 15 paras 11, 12). As to the conditions precedent to a sentence of detention in a young offender institution or custody for life see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85 et seq. Nothing in the Prison Act 1952 s 43 (as substituted and amended) prejudices the operation of the Criminal Justice Act 1982 s 12 (see PARA 637 ante); Prison Act 1952 s 43(7) (as so substituted).

At the date at which this volume states the law there are no separate young offender institutions for female offenders, though the following female prisons have parts designated to take young offenders: Brockhill, Drake Hall, Eastwood Park, Low Newton and Risley. See further 'Young Prisoners: A Thematic Review by HM Chief Inspector of Prisons for England and Wales' (1997, Home Office).

³ See text and notes 5-9 infra.

⁴ Prison Act 1952 s 43(4) (as substituted: see note 2 supra; amended by virtue of the Criminal Justice Act 1988 s 123(6), Sch 8 Pts I, II).

Provisions relating to the following matters do not apply to remand centres or young offender institutions and persons detained in them: (1) temporary discharge for ill-health (see the Prison Act 1952 s 28; and PARA 582 ante); and (2) the duty to state special reasons for closure (see s 37(2); and PARA 531 ante). See also, however, s 43(5) (as substituted and amended); and the text and note 11 infra. As to remand centres see PARA 701 post.

⁵ See *ibid* s 5A (as added); and PARA 508 ante.

6 See *ibid* s 6(2), (3) (as amended); and PARAS 511-512 ante.

7 See *ibid* s 16; and PARAS 502, 543 ante.

8 See *ibid* s 22 (as amended); and PARAS 582, 610 ante.

9 See *ibid* s 36 (as amended); and PARA 529 ante.

10 See the provisions of *ibid* ss 1-42 (as amended): see s 43(5) (as substituted and amended: see note 11 *infra*).

11 *Ibid* s 43(5) (as substituted: see note 2 *supra*; amended by the Criminal Justice and Public Order Act 1994 s 5). As to the power to make rules see the Prison Act 1952 s 47 (as amended); and PARAS 501-502 ante. As to the rules made see the Young Offender Institution Rules 1998, SI 1988/1422 (as amended); and PARA 645 *et seq* post.

12 Prison Act 1952 s 43(6) (as substituted: see note 2 *supra*).

13 See the Criminal Justice Act 1991 s 84 (substituted by the Criminal Justice and Public Order Act 1994 s 96); the Criminal Justice Act 1991 s 88A (added by the Criminal Justice and Public Order Act 1994 s 99); and PARA 529, 532 *et seq* ante.

UPDATE

643 Establishment of young offender institutions

TEXT AND NOTE 2--Prison Act 1952 s 43(1)(aa) amended: Criminal Justice and Immigration Act 2008 Sch 26 para 3.

NOTE 4--The Children Act 1989 also applies to young offender institutions in so far as a local authority's responsibilities under the Act extend to a child detained in such an institution: *R (on the application of the Howard League for Penal Reform) v Secretary of State for the Home Department* [2002] EWHC 2497 (Admin), [2003] 1 FLR 483.

NOTE 11--SI 1988/1422 now Young Offender Institution Rules 2000, SI 2000/3371, see further PARA 645-655.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(i) Young Offender Institutions/644. Transfers to prison.

644. Transfers to prison.

Where an offender has been sentenced to a sentence of detention in a young offender institution¹, and either:

- 186 (1) he has attained the age of 21 years²; or
- 187 (2) the conditions specified below are satisfied in relation to him³,

the Secretary of State⁴ may direct that he is to be treated as if he had been sentenced to imprisonment for the same term⁵.

The conditions mentioned above are:

- 188 (a) that the offender has attained the age of 18 years⁶; and
- 189 (b) that he has been reported to the Secretary of State by the Board of Visitors of the institution in which he is detained as exercising a bad influence on the other inmates of the institution or as behaving in a disruptive manner to the detriment of those inmates⁷.

Where the Secretary of State gives such a direction in relation to an offender, the portion of the term of detention in a young offender institution imposed by the sentence of detention in a young offender institution which he has already served is deemed to have been a portion of a term of imprisonment⁸. Rules under the Prison Act 1952⁹ may provide that any award for an offence against discipline made in respect of an offender serving a sentence of detention in a young offender institution is to continue to have effect after such a direction has been given in relation to him¹⁰.

The Secretary of State may from time to time direct that an offender sentenced to detention in a young offender institution or custody for life is to be detained in a prison or remand centre¹¹ instead of a young offender institution, but if the offender is under the age of 18 at the time of the direction, only for a temporary purpose¹².

1 Criminal Justice Act 1982 s 13(1)(a) (as amended: see note 5 infra).

2 Ibid s 13(1)(b)(i).

3 Ibid s 13(1)(b)(ii).

4 As to the Secretary of State see PARA 505 ante.

5 Criminal Justice Act 1982 s 13(1) (s 13(1), (3)-(5) amended by virtue of the Criminal Justice Act 1988 s 123(6), Sch 8 Pt I para 1, Pt II). An offender who by virtue of the Criminal Justice Act 1982 s 13 (as amended) falls to be treated as if he had been sentenced to imprisonment instead of detention in a young offender institution is not to be so treated for the purposes of the Criminal Justice Act 1991 s 65 (see PARA 628 ante): Criminal Justice Act 1982 s 13(3) (as so amended; further amended by the Crime and Disorder Act 1998 s 106, Sch 7 para 34). The Criminal Justice Act 1982 s 13 (as amended) applies to a person who is serving a sentence of custody for life under s 8(1) or (2) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 79), or is detained under the Children and Young Persons Act 1933 s 53 (as amended) as it applies to a person serving a sentence of detention in a young offender institution: Criminal Justice Act 1982 s 13(6) (added by the Criminal Justice Act 1991 s 100, Sch 11 para 33; amended by the Crime and Disorder Act 1998 Sch 7 para 34).

6 Criminal Justice Act 1982 s 13(2)(a).

7 Ibid s 13(2)(b).

8 Ibid s 13(4) (as amended: see note 5 supra).

9 See the Prison Act 1952 s 47 (as amended) (see PARAS 501-502 ante): see the Criminal Justice Act 1982 s 13(5) (as amended: see note 10 infra).

10 Ibid s 13(5) (as amended: see note 5 supra). As to the rules made see the Prison Rules 1999, SI 1999/728, r 57(2).

11 As to remand centres see PARA 701 post.

12 See the Criminal Justice Act 1982 s 1C(2) (as added and amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 96. See also *R v Accrington Youth Court, ex p Flood* [1998] 2 All ER 313, [1998] 1 WLR 156, where the court declared unlawful a policy operative over many years that authorised the allocation of female offenders aged between 15 and 17 years to prisons according to criteria which were wholly inconsistent with the exceptional and temporary basis on which such transfers may take place.

UPDATE

644 Transfers to prison

NOTES 1-10--1982 Act s 13 (as amended) now Powers of Criminal Courts (Sentencing) Act 2000 s 99 (amended by Offender Management Act 2007 Sch 3 para 9; and Armed Forces Act 2006 Sch 16 para 164).

TEXT AND NOTE 12--1982 Act s 1C, consolidated in the Powers of Criminal Courts (Sentencing) Act 2000 ss 95, 98, prospectively repealed: Criminal Justice and Court Services Act 2000 Sch 8.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(i) Young Offender Institutions/645. Rules for institutions for the detention of young offenders.

645. Rules for institutions for the detention of young offenders.

The Secretary of State¹ has made the Young Offender Institution Rules 1988² for the regulation and management of young offender institutions³.

In relation to a contracted-out young offender institution⁴, the Young Offender Institution Rules 1988 have effect subject to a number of modifications⁵.

Where the Secretary of State has entered into a contract for the running of part of a young offender institution⁶, that part and the remaining part are each to be treated as if they were separate young offender institutions in respect of the application of specified parts of the Young Offender Institution Rules 1988⁷.

Where the Secretary of State has entered into a contract for any functions⁸ at a directly managed young offender institution⁹ to be performed by prisoner custody officers¹⁰, references to an officer include references to a prisoner custody officer who is performing contracted-out functions for the purposes of, or for purposes connected with, the young offender institution¹¹.

1 As to the Secretary of State see PARA 505 ante.

2 Ie the Young Offender Institution Rules 1988, SI 1988/1422 (as amended).

3 As to the power to make such rules see the Prison Act 1952 s 47(1) (as amended); and PARAS 501-502 ante.

4 As to contracted-out Prison Service establishments see PARA 532 et seq ante.

5 See the Young Offender Institution Rules 1988, SI 1988/1422, r 79A(1) (added by SI 1997/789). Those modifications are that:

69 (1) references to an officer include references to a prisoner custody officer certified as such (ie under the Criminal Justice Act 1991 s 89(1): see PARA 524 note 10 ante) (see the Young Offender Institution Rules 1988, SI 1988/1422, r 79A(1)(a) (as so added));

70 (2) references to the governor generally (but see infra) include references to the director approved by the Secretary of State (ie for the purposes of the Criminal Justice Act 1991 s 85(1)(a): see PARA 533 ante) (see the Young Offender Institution Rules 1988, SI 1988/1422, r 79A(1)(b) (as so added));

71 (3) rule 68 does not apply in relation to a prison custody officer certified as such (ie under the Criminal Justice Act 1991 s 89(1): see PARA 524 ante) and performing custodial duties (see the Young Offender Institution Rules 1988, SI 1988/1422, r 79A(1)(c) (as so added)).

However, references to a governor in r 46 (as amended) (see PARA 646 note 17 post), r 48 (see PARA 646 note 19 post), r 49 (see PARA 653 post), r 51 (as substituted and amended) (see PARA 646 notes 22-23 post), r 52 (as substituted) (see PARA 646 notes 22, 24 post), r 53 (as substituted and amended) (see PARA 654 post), r 59 (as substituted and amended) (see PARA 646 note 26 post), r 60 (as substituted and amended) (see PARA 654 post), and r 79 (see PARA 647 note 4 post) include references to a controller appointed by the Secretary of State (ie under the Criminal Justice Act 1991 s 85(1)(b): see PARA 533 ante): Young Offender Institution Rules 1988, SI 1988/1422, r 79A(1)(b)(i) (as so added). References to a governor in rr 61(1), 65, 75 (see PARA 646 note 30 post) include references to the director and the controller: r 79A(1)(b)(ii) (as so added).

6 Ie contracted out in accordance with the Criminal Justice Act 1991 s 84(1) (see PARA 532 ante).

7 Young Offender Institution Rules 1988, SI 1988/1422, r 79B (added by SI 1997/789). The specified parts of the Young Offender Institution Rules 1988, SI 1988/1422 (as amended) are: Pt I (rr 1-2) (as amended), Pt II (rr 3-60A) (as amended), Pt III (rr 61-68), Pt IV (rr 69-71), and Pt VI (rr 79-80): r 79B (as so added).

8 le a contract under the Criminal Justice Act 1991 s 88A(1) (as added) (see PARA 529 ante).

9 'Directly managed young offender institution' means a young offender institution which is not a contracted-out young offender institution: Young Offender Institution Rules 1988, SI 1988/1422, r 79C(3) (r 79C added by SI 1997/789). As to contracted-out young offender institutions see the text and notes 6-7 supra.

10 le an officer authorised to perform custodial duties under the Criminal Justice Act 1991 s 89(1) (see PARA 524 ante).

11 Young Offender Institution Rules 1988, SI 1988/1422, r 79C(1) (as added: see note 9 supra). However, the power of the Secretary of State to approve a code of discipline to have effect in relation to officers does not extend to such prisoner custody officers: r 79C(2) (as so added).

UPDATE

645-655 Rules for institutions for the detention of young offenders ... Removal and transfers

SI 1988/1422 now Young Offender Institution Rules 2000, SI 2000/3371 (amended by SI 2002/2117, SI 2005/897, SI 2005/3438, SI 2007/3220, SI 2008/599, SI 2008/3155, SI 2009/3082). Rule numbers remain the same unless noted otherwise.

645 Rules for institutions for the detention of young offenders

NOTE 5--SI 1988/1422 r 79A(1) now Young Offender Institution Rules 2000, SI 2000/3371 r 86(1) (amended by SI 2002/2117, SI 2007/2953, SI 2007/3220). The director of a prison may, with the leave of the Secretary of State, delegate any of his powers and duties under SI 2000/3371 rr 49, 51, 52, 58, 58A, 60, 63, 64 and 65 to another officer of that prison: r 86(1A) (added by SI 2007/3220).

NOTE 7--SI 1988/1422 r 79B now SI 2000/3371 r 87.

NOTES 9, 11--SI 1988/1422 r 79C now SI 2000/3371 r 89.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(i) Young Offender Institutions/646. Similarities in rules regulating prisons.

646. Similarities in rules regulating prisons.

The rules regulating prisons and young offender institutions are in similar terms in respect of:

- 190 (1) temporary release¹;
- 191 (2) privileges²;
- 192 (3) information to inmates and reception³;
- 193 (4) requests and complaints⁴;
- 194 (5) communications generally, letters and visits⁵;
- 195 (6) police interviews⁶;
- 196 (7) facilities for legal advice and communications⁷;
- 197 (8) clothing⁸;
- 198 (9) food⁹;
- 199 (10) accommodation and bedding¹⁰;
- 200 (11) hygiene¹¹;
- 201 (12) women prisoners¹²;
- 202 (13) medical services, illness and death¹³;
- 203 (14) religion and welfare¹⁴;
- 204 (15) custody outside a young offender institution¹⁵;
- 205 (16) search¹⁶;
- 206 (17) removal from association¹⁷;
- 207 (18) use of force¹⁸;
- 208 (19) temporary confinement¹⁹;
- 209 (20) compulsory testing for controlled drugs²⁰;
- 210 (21) offences against discipline²¹;
- 211 (22) pre-hearing procedures²²;
- 212 (23) adjudicating authorities²³;
- 213 (24) disciplinary hearings²⁴;
- 214 (25) suspension of punishments²⁵;
- 215 (26) remission and mitigation of punishments²⁶;
- 216 (27) forfeiture of remission for existing prisoners²⁷;
- 217 (28) prohibited articles²⁸;
- 218 (29) entry, search and removal²⁹;
- 219 (30) Boards of Visitors³⁰.

1 Young Offender Institution Rules 1988, SI 1988/1422, r 6 (substituted by SI 1995/984; and amended by SI 1995/1599; SI 1999/962). As to temporary release see PARA 612 ante.

2 Young Offender Institution Rules 1988, SI 1988/1422, r 7 (substituted by SI 1995/1599). As to privileges see PARA 568 ante.

3 Young Offender Institution Rules 1988, SI 1988/1422, rr 8, 43(1), 44, 45 (r 8 amended by SI 1990/1763). As to the reception of prisoners and the information to be provided to them see PARAS 542, 547 ante.

4 Young Offender Institution Rules 1988, SI 1988/1422, r 9 (substituted by SI 1990/1763). As to complaints and grievances see PARA 572 ante.

5 Young Offender Institution Rules 1988, SI 1988/1422, r 10 (amended by SI 1995/1599; SI 1999/962); the Young Offender Institution Rules 1988, SI 1988/1422, r 11 (amended by SI 1992/513; SI 1995/1599; SI 1999/962); the Young Offender Institution Rules 1988, SI 1988/1422, rr 15, 71A (r 71A added by SI 1999/962).

As to contact with outside persons, personal letters and visits see PARAS 569-571 ante. There are some minor distinctions: see PARA 651 post.

6 Young Offender Institution Rules 1988, SI 1988/1422, r 12. As to police interviews see PARA 591 ante.

7 Ibid rr 13, 14 (r 14 substituted by SI 1993/3076). As to access to legal advice see PARAS 606-607 ante.

8 Young Offender Institution Rules 1988, SI 1988/1422, r 16 (amended by SI 1995/1599). As to clothing see PARA 575 ante.

9 Young Offender Institution Rules 1988, SI 1988/1422, rr 17 (amended by SI 1998/1545); the Young Offender Institution Rules 1988, SI 1988/1422, r 18 (amended by SI 1992/2081; SI 1998/1545). As to food see PARA 574 ante.

10 Young Offender Institution Rules 1988, SI 1988/1422, rr 19, 20. As to accommodation and bedding see PARA 573 ante.

11 Ibid r 21 (amended by SI 1998/1545; SI 1999/962). As to cleanliness and medical examinations see PARA 544 ante.

12 Young Offender Institution Rules 1988, SI 1988/1422, r 22. As to women prisoners see PARA 634 ante.

13 Ibid rr 24 (amended by SI 1993/3076; SI 1998/1545); the Young Offender Institution Rules 1988, SI 1988/1422, r 25 (amended by SI 1998/1545); the Young Offender Institution Rules 1988, SI 1988/1422, r 26. As to medical care and health see PARAS 580-583 ante.

14 Young Offender Institution Rules 1988, SI 1988/1422, rr 27, 28, 29, 30, 31, 32, 33. As to religion and welfare see PARAS 584-587 ante.

15 Ibid r 42 (amended by SI 1995/1599).

16 Young Offender Institution Rules 1988, SI 1988/1422, r 43 (amended by SI 1992/2081; SI 1999/962). As to searches see PARA 590 ante.

17 Young Offender Institution Rules 1988, SI 1988/1422, r 46 (amended by SI 1989/2142; SI 1998/1545). See also PARA 645 note 5 ante. As to removal from association see PARA 592 ante.

18 Young Offender Institution Rules 1988, SI 1988/1422, r 47. As to the use of force see PARA 589 ante.

19 Ibid r 48. In addition, further provision is made in relation to young offender institutions for (1) the inspection and certification of a room or cell which it is intended to designate for the use of temporarily confining inmates (r 48(2)); and (2) in relation to any young offender institution the Prison Act 1952 s 14(6) has effect so as to enable the provision of special rooms instead of special cells for the temporary confinement of refractory or violent inmates: (Young Offender Institution Rules 1988, SI 1988/1422, r 48(3)). See also PARA 645 note 5 ante. As to temporary confinement see PARA 594 ante.

20 Ibid r 49A (added by SI 1994/3194). As to testing of prisoners for drugs see PARA 545 ante.

21 Young Offender Institution Rules 1988, SI 1988/1422, r 50 (substituted by SI 1989/331; and amended by SI 1992/513; SI 1994/3194); the Young Offender Institution Rules 1988, SI 1988/1422, r 50A (added by SI 1994/3194). As to offences against discipline see PARA 597 ante.

22 Young Offender Institution Rules 1988, SI 1988/1422, r 51(1) (substituted by SI 1989/331); the Young Offender Institution Rules 1988, SI 1988/1422, r 52(1) (substituted by SI 1989/331). As to pre-hearing procedures see PARA 598 ante.

23 Young Offender Institution Rules 1988, SI 1988/1422, r 51 (substituted by SI 1989/331; and amended by SI 1992/513). See also PARA 645 note 5 ante. As to adjudication see PARA 599 ante.

24 Young Offender Institution Rules 1988, SI 1988/1422, r 52 (substituted by SI 1989/331). As to disciplinary hearings see PARA 600 ante.

25 Young Offender Institution Rules 1988, SI 1988/1422, r 58 (substituted by SI 1989/331; and amended by SI 1992/513). As to suspended punishments see PARA 602 ante.

26 Young Offender Institution Rules 1988, SI 1988/1422, r 59 (substituted by SI 1989/331; and amended by SI 1992/513). See also PARA 645 note 5 ante. As to remission and mitigation of punishments see PARA 603 ante.

27 Young Offender Institution Rules 1988, SI 1988/1422, r 60A (added by SI 1992/2081). as to forfeiture of remission see PARAS 591, 601 ante.

28 Young Offender Institution Rules 1988, SI 1988/1422, r 69. As to prohibited articles see PARA 604 ante.

29 Ibid rr 70, 71 (both amended by SI 1999/962). As to entry, search and removal see PARA 605 ante.

30 Young Offender Institution Rules 1988, SI 1988/1422, r 72 (amended by SI 1999/962); the Young Offender Institution Rules 1988, SI 1988/1422, r 73 (amended by SI 1989/331; SI 1999/962); the Young Offender Institution Rules 1988, SI 1988/1422, r 74 (amended by SI 1992/513); the Young Offender Institution Rules 1988, SI 1988/1422, r 75 (amended by SI 1989/331; SI 1992/513); the Young Offender Institution Rules 1988, SI 1988/1422, rr 76, 77, 78. As to the Boards of Visitors see PARA 511-513 ante.

UPDATE

645-655 Rules for institutions for the detention of young offenders ... Removal and transfers

SI 1988/1422 now Young Offender Institution Rules 2000, SI 2000/3371 (amended by SI 2002/2117, SI 2005/897, SI 2005/3438, SI 2007/3220, SI 2008/599, SI 2008/3155, SI 2009/3082). Rule numbers remain the same unless noted otherwise.

646 Similarities in rules regulating prisons

TEXT AND NOTES--The Young Offender Institution Rules 2000, SI 2000/3371 are in similar terms in respect of (31) the interception of communications (r 11 (amended by SI 2009/3082)); (32) the permanent log of communications (SI 2000/3371 r 12); (33) disclosure and retention of intercepted material (rr 13, 14 (r 13 amended by SI 2008/3155)); (34) the supervision of inmates by means of an overt closed circuit television system (SI 2000/3371 r 54); (35) the compulsory testing for alcohol (r 54A (added by SI 2005/897)); (36) defences to the offence of being intoxicated or having consumed alcohol (SI 2000/371 r 56A (added by SI 2005/897, and amended by SI 2005/3438)); and (37) the determination of a mode of inquiry into a disciplinary offence (SI 2000/3371 r 58A (see PARA 654A)).

NOTE 1--SI 1988/1422 r 6 now SI 2000/3371 r 5 (amended by SI 2005/3438).

NOTE 2--SI 1988/1422 r 7 now SI 2000/3371 r 6. As to systems of privilege operated by young offender institution see: *R (on the application of KB (a child, by his litigation friend LW) v Secretary of State for Justice* [2010] EWHC 15 (Admin), [2010] All ER (D) 59 (Jan).

NOTE 3--SI 1988/1422 rr 8, 43(1), 44, 45 now SI 2000/3371 rr 7, 46(1), 47, 48 (r 47 amended by SI 2005/897; SI 2000/3371 r 48 amended by SI 2009/3082).

NOTE 4--SI 1988/1422 r 9 now SI 2000/3371 r 8.

NOTE 5--SI 1988/1422 rr 10, 11, 15, 71A now SI 2000/3371, rr 9, 10, 18, 77.

NOTE 6--SI 1988/1422 r 12 now SI 2000/3371 r 15.

NOTE 7--SI 1988/1422 rr 13, 14 now SI 2000/3371 rr 16, 17 (both amended by SI 2009/3082).

NOTE 8--SI 1988/1422 r 16 now SI 2000/3371 r 19.

NOTE 9--SI 1988/1422 rr 17, 18 now SI 2000/3371 rr 20, 21 (r 20 amended by SI 2005/3438, SI 2009/3082; SI 2000/3371 r 21 amended by SI 2005/3438).

NOTE 10--SI 1988/1422 rr 19, 20 now SI 2000/3371 rr 22, 23.

NOTE 11--SI 1988/1422 r 21 now SI 2000/3371 r 24.

NOTE 12--SI 1988/1422 r 22 now SI 2000/3371 r 25.

NOTE 13--SI 1988/1422 rr 24-26 now SI 2000/3371 rr 27-29 (r 27 substituted by SI 2009/3082; SI 2000/3371 r 28 amended by SI 2005/3438, SI 2009/3082; SI 2000/3371 r 29 amended by SI 2008/599).

NOTE 14--SI 1988/1422 rr 27-33 now SI 2000/3371 rr 30-36.

NOTE 15--SI 1988/1422 r 42 now SI 2000/3371 r 45.

NOTE 16--SI 1988/1422 r 43 now SI 2000/3371 r 46.

NOTE 17--SI 1988/1422 r 46 now SI 2000/3371 r 49 (amended by SI 2005/3438, SI 2009/3082).

NOTE 18--SI 1988/1422 r 47 now SI 2000/3371 r 50.

NOTE 19--SI 1988/1422 r 48 now SI 2000/3371 r 51 (amended by SI 2005/3438).

NOTE 20--SI 1988/1422 r 49A now SI 2000/3371 r 53.

NOTE 21--SI 1988/1422 rr 50, 50A now SI 2000/3371 rr 55-57 (r 55 amended by SI 2005/897).

NOTES 22-24--SI 1988/1422 rr 51, 52 now SI 2000/3371 rr 58, 59 (both amended by SI 2002/2117).

NOTE 25--SI 1988/1422 r 58 now SI 2000/3371 r 63 (amended by SI 2002/2117).

NOTE 26--SI 1988/1422 r 59 now SI 2000/3371 r 64 (amended by SI 2005/897, SI 2008/599).

NOTE 27--SI 1988/1422 r 60A now SI 2000/3371 r 66.

NOTE 28--SI 1988/1422 r 69 now SI 2000/3371 r 74. See also r 74A (List C articles) (added by SI 2008/599).

NOTE 29--SI 1988/1422 rr 70, 71 now SI 2000/3371 rr 75, 76 (r 75 amended by SI 2005/897).

NOTE 30--SI 1988/1422 rr 72-78 now SI 2000/3371 rr 78-84 (all amended by SI 2008/599).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(i) Young Offender Institutions/647. Duties of officers and governor.

647. Duties of officers and governor.

The rules relating to the duties and conduct of young offender institution officers are in the same terms as those for prison officers¹. The code of discipline for prison officers also applies in young offender institutions². In the control of inmates, officers must seek to influence them through their own example and leadership, and to enlist their willing co-operation³. With the leave of the Secretary of State, the governor may delegate any of his powers and duties to another officer of the young offender institution⁴. An officer of a young offender institution may be liable, and the Home Office vicariously liable, for the damage caused by a detainee whom he had either left unsupervised or had supervised negligently⁵.

1 See the Young Offender Institution Rules 1988, SI 1988/1422, rr 61-68. As to discipline of prison officers see PARA 517 ante.

2 See the Young Offender Institution Rules 1988, SI 1988/1422, r 68. A booklet, Statutory Rules and other Information for the Guidance of Prison Officers, is issued to every young offender institution officer and includes the code of discipline approved by the Secretary of State for the purposes of the Young Offender Institution Rules 1988, SI 1988/1422, r 68. As to the modification of this provision in relation to contracted-out institutions see PARA 645 note 5 ante. As to the Secretary of State see PARA 505 ante.

3 Ibid r 41(2). See also PARA 652 post.

4 Ibid r 79. See also PARA 645 note 5 ante.

5 *Home Office v Dorset Yacht Co Ltd* [1970] AC 1004, [1970] 2 All ER 294, HL.

UPDATE

645-655 Rules for institutions for the detention of young offenders ... Removal and transfers

SI 1988/1422 now Young Offender Institution Rules 2000, SI 2000/3371 (amended by SI 2002/2117, SI 2005/897, SI 2005/3438, SI 2007/3220, SI 2008/599, SI 2008/3155, SI 2009/3082). Rule numbers remain the same unless noted otherwise.

647 Duties of officers and governor

NOTE 1--SI 1988/1422 rr 61-68 now Young Offender Institution Rules 2000, SI 2000/3371 rr 67-73.

NOTE 2--SI 1988/1422 r 68 now SI 2000/3371 r 73.

NOTE 3--SI 1988/1422 r 41(2) now SI 2000/3371 r 44(4).

NOTE 4--SI 1988/1422 r 79 now SI 2000/3371 r 85.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(i) Young Offender Institutions/648. Aims and general principles of young offender institutions.

648. Aims and general principles of young offender institutions.

The aim of a young offender institution is to help offenders to prepare for their return to the outside community¹. This is achieved, in particular, by:

- 220 (1) providing a programme of activities, including education, training and work designed to assist offenders to acquire or develop personal responsibility, self-discipline, physical fitness, interest and skills and to obtain suitable employment after release²;
- 221 (2) fostering links between the offender and the outside community³; and
- 222 (3) co-operating with the services responsible for the offender's supervision after release⁴.

1 Young Offender Institution Rules 1988, SI 1988/1422, r 3(1).

2 Ibid r 3(2)(a).

3 Ibid r 3(2)(b).

4 Ibid r 3(2)(c). As to supervision after release see PARA 628 ante.

UPDATE

**645-655 Rules for institutions for the detention of young offenders ...
Removal and transfers**

SI 1988/1422 now Young Offender Institution Rules 2000, SI 2000/3371 (amended by SI 2002/2117, SI 2005/897, SI 2005/3438, SI 2007/3220, SI 2008/599, SI 2008/3155, SI 2009/3082). Rule numbers remain the same unless noted otherwise.

648 Aims and general principles of young offender institutions

TEXT AND NOTES--SI 1988/1422 r 3 now Young Offender Institution Rules 2000, SI 2000/3371, r 3.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(i) Young Offender Institutions/649. Classification.

649. Classification.

Inmates may be classified in accordance with any directions of the Secretary of State¹ taking into account their ages, characters and circumstances².

1 As to the Secretary of State see PARA 505 ante.

2 Young Offender Institution Rules 1988, SI 1988/1422, r 4.

UPDATE

645-655 Rules for institutions for the detention of young offenders ... Removal and transfers

SI 1988/1422 now Young Offender Institution Rules 2000, SI 2000/3371 (amended by SI 2002/2117, SI 2005/897, SI 2005/3438, SI 2007/3220, SI 2008/599, SI 2008/3155, SI 2009/3082). Rule numbers remain the same unless noted otherwise.

649 Classification

NOTE 2--SI 1988/1422 r 4 now Young Offender Institution Rules 2000, SI 2000/3371, r 4.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(i) Young Offender Institutions/650. Occupation.

650. Occupation.

In furtherance of the aims of the young offender institution¹, an inmate must be occupied in a programme of activities including education, training courses and physical education². In all such activities regard must be paid to individual assessment and personal development³. The medical officer or a specified medical practitioner may excuse an inmate from work or any other activity on medical grounds; and no inmate may be set to participate in work or any other activity of a kind for which he is considered by the medical officer to be unfit⁴. An inmate may be required to participate in regime activities for no longer than the relevant period⁵ in a day, but may not be required to participate in any one regime activity for more than 8 hours in a day⁶. Inmates may be paid for their work or participation in other activities at rates approved by the Secretary of State⁷, either generally or in relation to particular cases⁸.

Provision must be made for the education of inmates by means of programmes of class teaching or private study within the normal working week and, so far as practicable, programmes of evening and weekend educational classes or private study⁹. The educational classes must so far as is practicable be such as will foster personal responsibility and an inmate's interests and skills and help him to prepare for his return to the community¹⁰. In relation to an inmate of compulsory school age, arrangements must be made for his participation in education or training courses for at least 15 hours a week within the normal working week¹¹. For those aged 17 or over who have special educational needs, arrangement must be made for education appropriate to their needs, if necessary within the normal working week¹².

In addition to provision for education there is to be provision for the training of inmates by means of training courses, in accordance with directions of the Secretary of State¹³. Training courses must be such as will foster personal responsibility and an inmate's interests and skills and improve his prospects of finding suitable employment after release¹⁴ and, so far as practicable, be such as to enable inmates to acquire suitable qualifications¹⁵.

The work provided must also, so far as practicable, be such as will foster personal responsibility and an inmate's interests and skills and help him to prepare for his return to the community¹⁶, and no inmate may do work of a kind not authorised by the Secretary of State¹⁷.

Facilities for physical education are to be provided within the normal working week¹⁸. There must also be provision for evening and weekend physical recreation¹⁹. The physical education activities must be such as will foster personal responsibility and an inmate's interests and skills and encourage him to make good use of his leisure on release²⁰. Arrangements must be made for each inmate²¹ to participate in physical education for at least two hours a week on average or, in the case of inmates detained in such institutions or parts of institutions as the Secretary of State may direct, for at least one hour each weekday on average, but outside the hours allotted to education in the case of an inmate of compulsory school age²². In the case of an inmate with a need for remedial physical activity, appropriate facilities will be provided²³.

1 See the Young Offender Institution Rules 1988, SI 1988/1422, r 3; and PARA 648 ante.

2 Ibid r 34(1) (substituted by SI 1996/1662).

3 Young Offender Institution Rules 1988, SI 1988/1422, r 34(2).

4 Ibid r 34(3) (amended by SI 1998/1545). As to medical officers see PARA 580 ante. As to consultation with medical practitioners see the Young Offender Institution Rules 1988, SI 1988/1422, r 24(3) (as substituted) (see PARA 646 note 13 ante).

5 The 'relevant period' for this purpose is (1) on a day in which an hour or more of physical education is provided for the inmate, 11 hours; (2) on a day in which no such education is provided for the inmate, 10 hours; or (3) on a day in which a period of less than an hour of such education is provided for the inmate, the sum of 10 hours and the period of such education provided: *ibid* r 34(4) (substituted by SI 1996/1662).

6 Young Offender Institution Rules 1988, SI 1988/1422, r 34(4) (as substituted: see note 5 *supra*).

7 As to the Secretary of State see PARA 505 ante.

8 Young Offender Institution Rules 1988, SI 1988/1422, r 34(5).

9 Ibid r 35(1). As to educational facilities for female prisoners aged 21 or over who are detained in young offender institutions see r 35(4); and PARA 634 text and note 7 ante.

10 Ibid r 35(1).

11 Ibid r 35(2) (amended by SI 1999/962). As to compulsory school age see the Education Act 1996 s 8; and EDUCATION vol 15(1) (2006 Reissue) PARA 15.

12 Young Offender Institution Rules 1988, SI 1988/1422, r 35(3) (amended by SI 1999/962).

13 Young Offender Institution Rules 1988, SI 1988/1422, r 36(1).

14 Ibid r 36(2).

15 Ibid r 36(3).

16 Ibid r 37(1).

17 Ibid r 37(2).

18 Ibid r 38(1).

19 Ibid r 38(1).

20 Ibid r 38(1).

21 Special provision is made for female inmates aged 21 years or over who are detained in young offender institutions: see *ibid* r 38(2A), (4) (as added and substituted); and PARA 634 ante.

22 Ibid r 38(2) (amended by SI 1996/1662).

23 Young Offender Institution Rules 1988, SI 1988/1422, r 38(3).

UPDATE

645-655 Rules for institutions for the detention of young offenders ... Removal and transfers

SI 1988/1422 now Young Offender Institution Rules 2000, SI 2000/3371 (amended by SI 2002/2117, SI 2005/897, SI 2005/3438, SI 2007/3220, SI 2008/599, SI 2008/3155, SI 2009/3082). Rule numbers remain the same unless noted otherwise.

650 Occupation

TEXT AND NOTES--SI 1988/1422 rr 34-38 now Young Offender Institution Rules 2000, SI 2000/3371, rr 37-41 (r 37 amended by SI 2009/3082).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(i) Young Offender Institutions/651. Social relations.

651. Social relations.

The rules for promoting the social relations of inmates resemble those applicable to prisoners¹. From the beginning of his detention consideration must be given, in consultation with the appropriate after-care organisation, to an inmate's future, and to the assistance to be given on and after release².

The governor³ must encourage links between the young offender institution and the community by taking steps to establish and maintain relations with suitable persons and agencies outside the institution⁴. Special attention is to be paid to the maintenance of such relations between an inmate and his family as seem desirable in the best interests of both⁵.

Subject to any directions of the Secretary of State⁶, an inmate is to be encouraged, as far as practicable, to participate in activities outside the young offender institution which will be of benefit to the community or of benefit to the inmate in helping him to prepare for his return to the community⁷.

The normal minimum provision as to letters is for one to be sent and received once a week⁸, and the normal minimum provision for visits is for an inmate to receive a visit twice in every period of four weeks⁹. The governor may allow additional letters and visits as a privilege or when necessary for the welfare of the prisoner or his family¹⁰.

The rules as to letters and visits are generally the same as those for prisons¹¹, but the governor may give such directions as he thinks fit for the supervision of visits to inmates, either generally or in a particular case¹². The right to a visit may be deferred until the expiration of any period in which an inmate is confined to a cell or room¹³.

1 See PARA 587 ante.

2 Young Offender Institution Rules 1988, SI 1988/1422, r 40(1). Every inmate who is liable to supervision after release must be given a careful explanation of his liability and the requirements to which he will be subject while under supervision: r 40(2). As to supervision after release see PARA 628 ante.

3 'Governor' includes an officer for the time being in charge of a young offender institution: *ibid* r 2.

4 *Ibid* r 39(1).

5 *Ibid* r 39(2).

6 As to the Secretary of State see PARA 505 ante.

7 Young Offender Institution Rules 1988, SI 1988/1422, r 39(3).

8 See *ibid* r 11(1)(a).

9 *Ibid* r 11(1)(b) (amended by SI 1992/513). If the Secretary of State so directs, an inmate may receive a visit only once in every four weeks: Young Offender Institution Rules 1988, SI 1988/1422, r 11(1)(b) (as so amended). Except as provided in the Young Offender Institution Rules 1988, SI 1988/1422 (as amended), an inmate is not permitted to communicate with any outside person, or that person with him, without the leave of the Secretary of State or as a privilege: r 10(2) (amended by SI 1995/1599). As to the Secretary of State see PARA 505 ante. As to privileges see the Young Offender Institution Rules 1988, SI 1988/1422, r 7 (as substituted). As to privileges see PARA 568 ante.

10 *Ibid* r 11(2) (amended by SI 1995/1599; and SI 1999/962).

11 See the Young Offender Institution Rules 1988, SI 1988/1422, rr 10, 11 (both as amended). As to personal letters and visits see PARA 570-571 ante.

12 Ibid r 10(4). This power is subject to any express provision in the Young Offender Institution Rules 1988, SI 1988/1422 (as amended): see r 10(4).

13 See ibid r 11(4).

UPDATE

645-655 Rules for institutions for the detention of young offenders ... Removal and transfers

SI 1988/1422 now Young Offender Institution Rules 2000, SI 2000/3371 (amended by SI 2002/2117, SI 2005/897, SI 2005/3438, SI 2007/3220, SI 2008/599, SI 2008/3155, SI 2009/3082). Rule numbers remain the same unless noted otherwise.

651 Social relations

NOTE 2--SI 1988/1422 r 40 now Young Offender Institution Rules 2000, SI 2000/3371 r 43.

NOTES 4, 5, 7--SI 1988/1422 r 39 now SI 2000/3371 r 42.

NOTES 8-13--SI 1988/1422 rr 10, 11 now SI 2000/3371 rr 9, 10 (r 10 amended by SI 2008/599).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(i) Young Offender Institutions/652. Discipline and control.

652. Discipline and control.

The maintenance of order and discipline must be with no more restriction than is required in the interests of security and well ordered community life¹. Notwithstanding this requirement, regimes may be established under which stricter order and discipline are maintained and which emphasise strict standards of dress, appearance and conduct². However, no inmate is required to participate in such a regime unless he has been first assessed as being suitable for it; and no inmate is to be required to continue with such a regime if at any time it appears that he is no longer suitable for it³. An inmate's suitability for a stricter regime is to be assessed by reference to whether he is sufficiently fit in mind and body to undertake it and whether, in the opinion of the Secretary of State⁴, experience of the regime will further his rehabilitation⁵.

The rules relating to custody outside a young offender institution, searches, records and photographs, and compulsory testing for controlled drugs are in the same terms as for prisons⁶.

1 Young Offender Institution Rules 1988, SI 1988/1422, r 41(1).

2 Ibid r 41(1A) (r 41(1A), (1B) added by SI 1996/1662).

3 Young Offender Institution Rules 1988, SI 1988/1422, r 41(1A) (as added: see note 2 supra).

4 As to the Secretary of State see PARA 505 ante.

5 Young Offender Institution Rules 1988, SI 1988/1422, r 41(1B) (as added: see note 2 supra).

6 See the Young Offender Institution Rules 1988, SI 1988/1422, r 42 (amended by SI 1995/1599); the Young Offender Institution Rules 1988, SI 1988/1422, r 43 (amended by SI 1992/2081; SI 1996/1662; SI 1999/962); the Young Offender Institution Rules 1988, SI 1988/1422, r 44; and PARA 646 ante. For these purposes, 'controlled drug' means any drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1971 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 770 et seq; and MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 237 et seq); Young Offender Institution Rules 1988, SI 1988/1422, r 2(1) (definition added by SI 1994/3194).

UPDATE

645-655 Rules for institutions for the detention of young offenders ... Removal and transfers

SI 1988/1422 now Young Offender Institution Rules 2000, SI 2000/3371 (amended by SI 2002/2117, SI 2005/897, SI 2005/3438, SI 2007/3220, SI 2008/599, SI 2008/3155, SI 2009/3082). Rule numbers remain the same unless noted otherwise.

652 Discipline and control

TEXT AND NOTES--SI 1988/1422 rr 41-44 now Young Offender Institution Rules 2000, SI 2000/3371, rr 44-47 (r 47 amended by SI 2005/897).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(i) Young Offender Institutions/653. Restraints.

653. Restraints.

The governor¹ may order an inmate to be put under restraint where this is necessary to prevent the inmate from injuring himself or others, damaging property or creating a disturbance². Notice of such an order must be given without delay to a member of the Board of Visitors³ and to the medical officer or a specified medical practitioner⁴. On receipt of the notice the medical officer or practitioner must inform the governor whether there are any reasons why the inmate should not be put under restraint⁵. The governor must give effect to any recommendation which the medical officer or practitioner may make⁶. An inmate must not be kept under restraint longer than necessary, nor must he be so kept for longer than 24 hours without a direction in writing given by a member of the Board of Visitors or by an officer of the Secretary of State⁷ (not being an officer of a young offender institution)⁸. Such a direction must state the grounds for the restraint and the time during which it may continue⁹. Particulars of every case of restraint are to be forthwith recorded¹⁰. Except as provided above, no inmate may be put under restraint otherwise than for his safe custody during removal, or on medical grounds by direction of the medical officer or medical practitioner¹¹. No inmate may be put under restraint as a punishment¹². The means of restraint must be of a pattern authorised by the Secretary of State and is to be used in such manner and under such conditions as the Secretary of State may direct¹³.

1 See PARA 645 note 5 ante.

2 Young Offender Institution Rules 1988, SI 1988/1422, r 49(1) (amended by SI 1999/962). The governor may not order an inmate aged less than 17 to be put under restraint, except that he may order such an inmate be placed in handcuffs where this is necessary to prevent the inmate from injuring himself or others, damaging property or creating a disturbance: Young Offender Institution Rules 1988, SI 1988/1422, r 49(1A) (added by SI 1999/962).

3 As to Boards of Visitors see PARAS 511-513 ante. See also PARA 646 head (30) ante.

4 Young Offender Institution Rules 1988, SI 1988/1422, r 49(2) (amended by SI 1998/1545). As to the medical officers and medical services generally see PARA 580 ante. As to consultation with medical practitioners see Young Offender Institution Rules 1988, SI 1988/1422, r 24(3) (as substituted) (see PARA 646 note 13 ante).

5 Ibid r 49(3) (substituted by SI 1998/1545).

6 Young Offender Institution Rules 1988, SI 1988/1422, r 49(3) (as substituted: see note 5 supra).

7 As to officers of the Secretary of State see PARA 508 ante. As to the Secretary of State see PARA 505 ante.

8 Young Offender Institution Rules 1988, SI 1988/1422, r 49(4).

9 Ibid r 49(4).

10 Ibid r 49(5).

11 Ibid r 49(6) (amended by SI 1998/1545).

12 Young Offender Institution Rules 1988, SI 1988/1422, r 49(6).

13 Ibid r 49(7).

UPDATE

645-655 Rules for institutions for the detention of young offenders ...
Removal and transfers

SI 1988/1422 now Young Offender Institution Rules 2000, SI 2000/3371 (amended by SI 2002/2117, SI 2005/897, SI 2005/3438, SI 2007/3220, SI 2008/599, SI 2008/3155, SI 2009/3082). Rule numbers remain the same unless noted otherwise.

653 Restraints

TEXT AND NOTES--SI 1988/1422 r 49 now Young Offender Institution Rules 2000, SI 2000/3371, r 52 (amended by SI 2005/3438, SI 2008/599, SI 2009/3082).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(i) Young Offender Institutions/654. Disciplinary awards.

654. Disciplinary awards.

The awards which the governor may make in respect of a disciplinary offence¹ are the following:

- 223 (1) caution²;
- 224 (2) forfeiture for a period not exceeding 21 days of any privilege³;
- 225 (3) removal for a period not exceeding 21 days from any particular activity or activities of the young offender institution, other than education, training courses, work and physical education⁴;
- 226 (4) extra work outside the normal working week for a period not exceeding 21 days and for not more than two hours a day⁵;
- 227 (5) stoppage or deduction from earnings for a period not exceeding 42 days and of an amount not exceeding 21 days earnings⁶;
- 228 (6) confinement in a cell or room for a period not exceeding seven days⁷;
- 229 (7) removal from his wing or living unit for a period not exceeding 21 days⁸;
- 230 (8) in the case of an inmate who is a short term or long term prisoner, an award of additional days not exceeding 42 days⁹.

If an inmate is found guilty of more than one charge arising out of an incident, punishments may be ordered to run consecutively but, in the case of an award of additional days, the total period added may not exceed 42 days¹⁰.

An award of a caution may not be combined with any other punishment for the same charge¹¹. In imposing a punishment under these provisions, the governor must take into account any guidelines that the Secretary of State may from time to time issue as to the level of punishment that should normally be imposed for a particular offence against discipline¹².

The provisions relating to suspension, remission, mitigation of awards and quashing of findings of guilt are the same as those that apply to prisons¹³.

1 As to disciplinary offences see PARA 646 note 21 ante.

2 Young Offender Institution Rules 1988, SI 1988/1422, r 53(1)(a) (r 53 substituted by SI 1989/331). This form of punishment may also be imposed on female prisoners aged 21 or over who are detained in a young offender institution: see r 60(1)(i)(a). See also PARA 645 note 5 ante.

3 Young Offender Institution Rules 1988, SI 1988/1422, r 53(1)(b) (as substituted: see note 2 supra; and amended by SI 1995/984). As to privileges see the Young Offender Institution Rules 1988, SI 1988/1422, r 7 (as substituted); and PARA 646 note 2 ante. In relation to female prisoners aged 21 or over, the period during which privileges may be forfeited is extended to 42 days: r 60(1)(i)(b) (substituted by SI 1989/331; and amended by SI 1995/984).

4 Young Offender Institution Rules 1988, SI 1988/1422, r 53(1)(c) (as substituted: see note 2 supra; and amended by SI 1995/984). As to education, training courses, work and physical education see PARA 650 ante. This form of punishment may also be imposed on female prisoners aged 21 or over who are detained in a young offender institution: Young Offender Institution Rules 1988, SI 1988/1422, r 60(1)(i)(c) (substituted by SI 1989/331; and amended by SI 1995/984).

5 Young Offender Institution Rules 1988, SI 1988/1422, r 53(1)(d) (as substituted: see note 2 supra; and amended by SI 1995/984). This form of punishment may also be imposed on female prisoners aged 21 or over

who are detained in a young offender institution: Young Offender Institution Rules 1988, SI 1988/1422, r 60(1)(i) (d) (substituted by SI 1989/331; and amended by SI 1995/984).

6 Young Offender Institution Rules 1988, SI 1988/1422, r 53(1)(e) (as substituted: see note 2 supra; and amended by SI 1992/513). In relation to female prisoners aged 21 or over who are detained in young offender institutions, the period during which earnings may be deducted is 84 days and the amount of deduction not to be exceeded is 42 days earnings: Young Offender Institution Rules 1988, SI 1988/1422, r 60(1)(i)(e) (substituted by SI 1989/331; and amended by SI 1992/513).

7 Young Offender Institution Rules 1988, SI 1988/1422, r 53(1)(f) (as substituted: see note 2 supra; and amended by SI 1993/3076). In relation to female prisoners aged 21 or over who are detained in young offender institutions, the period during which they may be confined must not exceed 14 days: Young Offender Institution Rules 1988, SI 1988/1422, r 60(1)(i)(f) (substituted by SI 1989/331; and amended by SI 1993/3076). No punishment of confinement to a cell or room may be imposed unless the medical officer has certified that the inmate is in a fit state of health to be so dealt with: Young Offender Institution Rules 1988, SI 1988/1422, r 56(1) (substituted by SI 1989/331). No cell or room may be used as a detention cell or room for the purposes of a punishment of confinement to a cell or room unless it has been certified by an officer of the Secretary of State (not being an officer from the young offender institution) that it is suitable for the purpose; that its size, lighting, heating, ventilation and fittings are adequate for health; and that it allow the inmate to communicate at any time with an officer: Young Offender Institution Rules 1988, SI 1988/1422, r 56(2) (substituted by SI 1989/331). AS to the Secretary of State see PARA 505 ante.

8 Young Offender Institution Rules 1988, SI 1988/1422, r 53(1)(g) (as substituted: see note 2 supra; and amended by SI 1995/984). This punishment is not available in respect of female prisoners aged 21 or over who are detained in young offender institutions: see the Young Offender Institution Rules 1988, SI 1988/1422, r 60 (as substituted and amended).

Following the imposition of a punishment of removal from his wing or living unit, an inmate must be accommodated in a separate part of the young offender institution under such restrictions of earnings and activities as the Secretary of State may direct: r 57 (substituted by SI 1989/331).

9 Young Offender Institution Rules 1988, SI 1988/1422, r 53(1)(h) (as substituted: see note 2 supra; and amended by SI 1992/2081; SI 1995/984). This form of punishment may also be imposed on female prisoners aged 21 or over who are detained in a young offender institution: Young Offender Institution Rules 1988, SI 1988/1422, r 60(1)(i)(g) (substituted by SI 1989/331; and amended by SI 1992/2081; SI 1995/984). As to short term or long term prisoners and the effect of additional days upon release dates see PARA 601 ante. In relation to any existing prisoner or existing licensee who has forfeited any remission of his sentence, the provisions of the Criminal Justice Act 1991 Pt II (ss 32-51) (as amended) apply as if he had been awarded such number of additional days as equals the number of days of remission which he forfeited: Young Offender Institution Rules 1988, SI 1988/1422, r 60A(2) (added by SI 1992/2081). For the meanings of 'existing prisoner' and 'existing licensee' in relation to the Young Offender Institution Rules 1988, SI 1988/1422, r 60 (as substituted and amended) see the Criminal Justice Act 1991 s 101(1), Sch 12 para 8(1): Young Offender Institution Rules 1988, SI 1988/1422, r 60A(1) (added by SI 1992/2081).

10 Young Offender Institution Rules 1988, SI 1988/1422, r 53(2) (as substituted: see note 2 supra; and amended by SI 1989/2142; SI 1992/2081; SI 1995/984). Similarly, in relation to female prisoners aged 21 or over who are detained in young offender institutions, the period during which punishments may be ordered to run consecutively may not exceed 42 additional days: Young Offender Institution Rules 1988, SI 1988/1422, r 60(3) (substituted by SI 1989/331; and amended by SI 1992/513; SI 1992/2081; SI 1995/984).

11 Young Offender Institution Rules 1988, SI 1988/1422, r 53(3) (added by SI 1999/962).

12 Young Offender Institution Rules 1988, SI 1988/1422, r 53(4) (added by SI 1999/962).

13 See PARA 646 notes 25-27 ante.

UPDATE

645-655 Rules for institutions for the detention of young offenders ... Removal and transfers

SI 1988/1422 now Young Offender Institution Rules 2000, SI 2000/3371 (amended by SI 2002/2117, SI 2005/897, SI 2005/3438, SI 2007/3220, SI 2008/599, SI 2008/3155, SI 2009/3082). Rule numbers remain the same unless noted otherwise.

654 Disciplinary awards

TEXT AND NOTES--The governor has power to determine the mode of inquiry into a disciplinary offence and refer it to an adjudicator (see PARA 654A) who has power to impose specified punishments (see PARA 654B), in respect of which an inmate may request a review (see PARA 654C).

NOTES 2-12--SI 1988/1422 rr 53, 60 now SI 2000/3371 rr 60, 65 (r 60 amended by SI 2002/2117; r 65 amended by SI 2005/3438).

TEXT AND NOTE 6--Words 'an amount not exceeding 21 days earnings' omitted: SI 2000/3371 reg 60(1)(e) (amended by SI 2002/2117).

TEXT AND NOTE 7--Now, head (6) in the case of an offence against discipline committed by an inmate who was aged 18 or over at the time of commission of the offence, other than an inmate who is serving the period of detention and training under a detention and training order pursuant to the Powers of Criminal Courts (Sentencing) Act 2000 s 100 (see PARA 656) confinement to a cell or room for a period not exceeding ten days: SI 2000/3371 r 60(1)(f) (amended by SI 2002/2117).

NOTE 7--SI 1988/1422 r 56 now SI 2000/3371 r 61 (amended by SI 2009/3082).

NOTE 8--SI 1988/1422 r 57 now SI 2000/3371 r 62.

TEXT AND NOTE 9--Head (8) omitted: SI 2002/2117. SI 1988/1422 r 60A now SI 2000/3371 r 66.

NOTE 10--For 'in the case ... exceed 42 days' read 'in the case of a punishment of cellular confinement the total period must not exceed ten days': SI 2000/3771 reg 60(2) (amended by SI 2002/2117).

TEXT AND NOTE 11--Words 'an award of' omitted: SI 2000/3771 reg 60(3) (amended by SI 2002/2117).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(i) Young Offender Institutions/654A. Determination of mode of inquiry.

654A. Determination of mode of inquiry.

Before inquiring into a charge of an offence against discipline the governor must determine whether it is so serious that additional days should be awarded for the offence, if the inmate is found guilty¹. Where the governor determines that it is so serious, he must (1) refer the charge to an adjudicator² for him to inquire into it; (2) refer any other charge arising out of the same incident to the adjudicator for him to inquire into it; and (3) inform the inmate who has been charged that he has done so³. Where he determines that it is not so serious, he must proceed to inquire into the charge⁴.

If at any time during an inquiry into a charge by the governor, or following such an inquiry, after the governor has found the inmate guilty of an offence but before he has imposed a punishment for that offence, it appears to the governor that the charge is so serious that additional days should be awarded for the offence if the inmate is found guilty, the governor must act in accordance with heads (1)-(3) above and the adjudicator must first inquire into any charge so referred to him not later than, save in exceptional circumstances, 28 days after the charge was referred⁵.

1 Young Offender Institution Rules 2000, SI 2000/3371, r 58A(1) (r 58A added by SI 2002/2117).

2 'Adjudicator' means a District Judge (Magistrates' Courts) or Deputy District Judge (Magistrates' Courts) approved by the Lord Chancellor for the purpose of inquiring into a charge which has been referred to him: SI 2000/3371 r 2(1) (definition added by SI 2002/2117, substituted by SI 2005/897). Any appointment to the office of adjudicator in exercise of the function under SI 2000/3371 must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 3 (as amended by Judicial Appointments and Discipline (Modification of Offices) Order 2006, SI 2006/678), in accordance with the 2005 Act ss 85-93, 96: see COURTS vol 10 (Reissue) PARA 515B.18.

3 SI 2000/3371 r 58A(2)(a) (r 58A as added: see NOTE 1).

4 Ibid r 58A(2)(b) (r 58A as added: see NOTE 1).

5 Ibid r 58A(3) (r 58A as added: see NOTE 1).

UPDATE

645-655 Rules for institutions for the detention of young offenders ... Removal and transfers

SI 1988/1422 now Young Offender Institution Rules 2000, SI 2000/3371 (amended by SI 2002/2117, SI 2005/897, SI 2005/3438, SI 2007/3220, SI 2008/599, SI 2008/3155, SI 2009/3082). Rule numbers remain the same unless noted otherwise.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(i) Young Offender Institutions/654B. Adjudicator's punishments.

654B. Adjudicator's punishments.

If an adjudicator¹ finds an inmate guilty of an offence against discipline, he may impose one or more of the following punishments:

- (1) any of the punishments which may be imposed by a governor²;
- (2) in the case of an inmate who is a short-term prisoner, long-term prisoner or fixed-term prisoner, an award of additional days not exceeding 42 days³.

If an inmate is found guilty of more than one charge arising out of an incident, punishments may be ordered to run consecutively but, in the case of an award of additional days, the total period added must not exceed 42 days and, in the case of a punishment of cellular confinement, the total period must not exceed ten days⁴.

A caution must not be combined with any other punishment for the same charge⁵.

¹ For the meaning of 'adjudicator' see PARA 654A NOTE 2.

² I.e. a disciplinary award under the Young Offender Institution Rules 2000, SI 2000/3371, r 60(1) (see PARA 654): r 60A(1)(a) (r 60A added by SI 2002/2117; and amended by SI 2005/3438).

³ SI 2000/3771 r 60A(1)(b) (r 60A as added: see NOTE 2).

⁴ Ibid r 60A(3) (r 60A as added: see NOTE 2).

⁵ Ibid r 60A(2) (r 60A as added: see NOTE 2).

UPDATE

**645-655 Rules for institutions for the detention of young offenders ...
Removal and transfers**

SI 1988/1422 now Young Offender Institution Rules 2000, SI 2000/3371 (amended by SI 2002/2117, SI 2005/897, SI 2005/3438, SI 2007/3220, SI 2008/599, SI 2008/3155, SI 2009/3082). Rule numbers remain the same unless noted otherwise.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(i) Young Offender Institutions/654C. Review of Adjudicator's punishment.

654C. Review of Adjudicator's punishment.

Where a punishment is imposed by an adjudicator¹ an inmate may, within 14 days of receipt of the punishment, request in writing that a reviewer² conducts a review³. The review must be commenced within 14 days of receipt of the request and must be conducted on the papers alone⁴. The review must only be of the punishment imposed and must not be a review of the finding of guilt⁵. On completion of the review, if it appears to the reviewer that the punishment imposed was manifestly unreasonable, he may:

- (1) reduce the number of any additional days awarded;
- (2) for whatever punishment has been imposed by the adjudicator, substitute another punishment which is, in his opinion, less severe; or
- (3) quash the punishment entirely⁶.

An inmate requesting a review must serve any additional days awarded⁷ unless or until they are reduced⁸.

¹ le under the Young Offender Institution Rules 2000, SI 2000/3371, r 60A(1) (see PARA 654B NOTES 2, 3) or r 65(1A). For the meaning of 'adjudicator' see PARA 654A NOTE 2.

² 'Reviewer' means the Senior District Judge (Chief Magistrate) or any deputy of such a judge as nominated by that judge: SI 2000/3371 r 60B(1) (r 60B added by SI 2005/897 and amended by SI 2006/680).

³ Ibid r 60B(2) (as added: see NOTE 2).

⁴ Ibid r 60B(3) (as added: see NOTE 2).

⁵ Ibid r 60B(4) (as added: see NOTE 2).

⁶ Ibid r 60B(5) (as added: see NOTE 2).

⁷ le under ibid r 60A(1)(b) (see PARA 654B NOTE 3) or r 65(1A)(b).

⁸ Ibid r 60B(6) (as added: see NOTE 2).

UPDATE

645-655 Rules for institutions for the detention of young offenders ... Removal and transfers

SI 1988/1422 now Young Offender Institution Rules 2000, SI 2000/3371 (amended by SI 2002/2117, SI 2005/897, SI 2005/3438, SI 2007/3220, SI 2008/599, SI 2008/3155, SI 2009/3082). Rule numbers remain the same unless noted otherwise.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(i) Young Offender Institutions/655. Removal and transfers.

655. Removal and transfers.

The provisions relating to the removal and transfer of prisoners for judicial and other purposes apply to persons detained in young offender institutions¹. The rules as to custody during removal and protection from public view resemble those for prisoners². An inmate being taken to or from a young offender institution in custody must be exposed as little as possible to public observation, and proper care must be taken to protect him from curiosity and insult³.

1 See the Crime Sentences Act 1997 ss 41, 54, Sch 1; and PARA 548 et seq ante.

2 See PARA 538 ante.

3 Young Offender Institution Rules 1988, SI 1988/1422, r 42(1). An inmate required to be taken in custody anywhere outside a young offender institution must be kept in the custody of an officer appointed under the Prison Act 1952 s 3 (as amended) (see PARA 505 ante) or of a police officer: Young Offender Institution Rules 1988, SI 1988/1422, r 42(2). An inmate required to be taken in custody to any court must, when he appears before the court, wear his own clothing or ordinary civilian clothing provided by the governor r 42(3) (substituted by SI 1995/1599). As to custody during trial see PARA 539 ante.

UPDATE

645-655 Rules for institutions for the detention of young offenders ... Removal and transfers

SI 1988/1422 now Young Offender Institution Rules 2000, SI 2000/3371 (amended by SI 2002/2117, SI 2005/897, SI 2005/3438, SI 2007/3220, SI 2008/599, SI 2008/3155, SI 2009/3082). Rule numbers remain the same unless noted otherwise.

655 Removal and transfers

NOTE 3--SI 1988/1422 r 42 now the Young Offender Institution Rules 2000, SI 2000/3371, r 45.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(i) Young Offender Institutions/656. Release, supervision and recall.

656. Release, supervision and recall.

Persons detained in young offender institutions pursuant to:

- 231 (1) a sentence of detention in a young offender institution¹ or a determinate sentence of detention under the Children and Young Persons Act²; and
- 232 (2) a sentence of detention at Her Majesty's pleasure³ or for life⁴,

are released, and subject to recall, according to almost identical mechanisms as adult prisoners⁵.

In respect of persons who are to be detained in young offender institutions pursuant to a detention and training order an altogether different system will apply⁶. In normal circumstances the period of detention and training under a detention and training order is to be one-half of the term of the order⁷. However, the Secretary of State⁸ may at any time release the offender if he is satisfied that exceptional circumstances exist which justify the offender's release on compassionate grounds⁹.

The Secretary of State may also release the offender:

- 233 (a) in the case of an order for a term of 8 months or more but less than 18 months, one month before the half-way point of the term of the order¹⁰; and
- 234 (b) in the case of an order for a term of 18 months or more, one month or two months before that point¹¹.

If the youth court so orders, following an application made by the Secretary of State for the purpose, the Secretary of State must release the offender:

- 235 (i) in the case of an order for a term of 8 months or more but less than 18 months, one month after the half-way point of the term of the order¹²; and
- 236 (ii) in the case of an order for a term of 18 months or more, one month or two months after that point¹³.

Upon an offender's release from detention, he must spend a period of supervision which begins with his release whether at the half-way point of the term of the order or otherwise; and which ends when the term of the order ends¹⁴. However, the Secretary of State may by order provide that the period of supervision is to end at such point during the term of a detention and training order as may be specified in the order¹⁵. During the period of supervision the offender is under the supervision of a probation officer, a social worker of the local authority social services department, or a member of a youth offending team¹⁶.

The offender must be given a notice from the Secretary of State specifying the category of person for the time being responsible for his supervision¹⁷ and any requirements with which he must for the time being comply¹⁸. Such a notice must be given to the offender before the commencement of the period of supervision¹⁹, and where there is any alteration in the category of person responsible for his supervision or the requirements with which he must comply, before such alteration comes into effect²⁰.

Where it is satisfied that a offender has failed to comply with any requirements contained in a notice, a youth court has power to²¹:

- 237 (A) order the offender to be detained in such secure accommodation as the Secretary of State may determine for such period, not exceeding the shorter of three months or the remainder of the term of the detention and training order, as the court may specify²²; or
- 238 (B) impose on the offender a fine not exceeding level 3 on the standard scale²³.

Where an offender who is subject to a detention and training order commits an offence after his release and before the date on which the term of the order ends, and that offence is one which is punishable with imprisonment in the case of a person aged 21 or over, the court may, whether or not it passes any other sentence on him, order the offender to be detained in such secure accommodation as the Secretary of State may determine for the whole or any part of the period which begins with the date of the court's order and which is equal in length to the period between the date on which the new offence was committed and the date when the term of the detention and training order would have ended²⁴.

1 See the Criminal Justice Act 1982 s 1B (as added and amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 85 et seq.

2 See the Children and Young Person Act 1933 s 53(2), (3) (as respectively substituted and amended).

3 See *ibid* s 53(1) (as substituted and amended).

4 See *ibid* s 53(2), (3) (as respectively substituted and amended).

5 See the Criminal Justice Act 1991 s 43 (amended by the Crime and Disorder Act 1998 s 119, Sch 8 para 87). The effect of the Criminal Justice Act 1991 s 43 (as amended) is to apply Pt II (ss 32-51) (as amended) to persons detained in respect of the sentences specified in heads (1) and (2) in the text. In relation to detainees who are serving determinate sentences and are short term prisoners, the application of Pt II (ss 32-51) (as amended) is modified to the extent that where the sentence is for a term of 12 months or less their release upon serving half of that sentence is unconditional, and where it is for a term of more than 12 months it is on licence: see s 43(4). The application of Pt II (ss 32-51) (as amended) is further modified for all persons under the age of 22 who are released on licence (irrespective of the kind of sentence they are serving) in that the reference to supervision by a probation officer (see s 37(4A) (as amended); and PARA 627 ante) is deemed to include a reference to supervision by a social worker of a local authority social services department: see s 43(5) (amended by the Crime and Disorder Act 1998 s 119, Sch 8 para 87(2)). As to sentences in respect of young offenders see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 10 et seq. As to release of prisoners see PARAS 612-622 et seq ante. As to the special provisions relating to supervision see PARAS 627-628 ante.

6 The detention and training order is created by the Crime and Disorder Act 1998 s 73 (see PARA 628 ante). At the date at which this volume states the law ss 73-79 are not yet in force. At such time as those provisions do come into effect the detention and training order will replace the sentence of detention in a young offender institution in respect of those aged under 18 years and the secure training order: see s 73(7). Where an offender is subject, at the same time, to a detention and training order and to a sentence of detention in a young offender institution, then for certain purposes relating to release, supervision and licence he is to be treated as though he were subject only to the one that was imposed on the later occasion: see s 79(3). See further PARAS 625, 628 ante.

7 *Ibid* s 75(2) (see note 6 supra). Pre-trial periods during which an offender was remanded in custody may be taken into account by the court when determining the appropriate period of a detention and training order: see s 74(5), (6). As to the calculation of the point in an offender's sentence at which he will have served half the order see s 74(8).

8 As to the Secretary of State see PARA 505 ante.

9 Crime and Disorder Act 1998 s 75(3) (see note 6 supra).

10 *Ibid* s 75(4)(a) (see note 6 supra). The power under s 75(4)(a), (b) is likely to be exercised where by reason of good progress, as measured against the sentence plan of the offender, the Secretary of State considers it desirable to direct the offender's early release.

11 Ibid s 75(4)(b) (see note 6 supra).

12 Ibid s 75(5)(a) (see note 6 supra). The power under s 75(5)(a), (b) is likely to be exercised where by reason of poor progress, as measured against the sentence plan of the offender, it is considered that the period of detention and training should be extended.

13 Ibid s 75(5)(b) (see note 6 supra).

14 Ibid s 76(1) (see note 6 supra).

15 Ibid s 76(2) (see note 6 supra).

16 Ibid s 76(3) (see note 6 supra). The category of person to supervise the offender is to be determined from time to time by the Secretary of State: s 76(3). As to probation officers and the making of arrangements for the selection of an officer to supervise a person subject to supervision by a probation officer under a detention and training order see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 92. As to the particular conditions with which probation officers must comply see s 76(4), (5).

17 Ibid s 76(6)(a) (see note 6 supra).

18 Ibid s 76(6)(b) (see note 6 supra).

19 Ibid s 76(7)(a) (see note 6 supra).

20 Ibid s 76(7)(b) (see note 6 supra).

21 Ibid s 77(3) (see note 6 supra).

22 Ibid s 77(3)(a) (see note 6 supra). 'Secure accommodation' means: (1) a secure training centre; (2) a young offender institution; (3) accommodation provided by a local authority for the purpose of restricting the liberty of children and young persons; (4) accommodation provided for that purpose under the Children Act 1989 s 82(5) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 158); or (5) such other accommodation provided for the purpose of restricting liberty as the Secretary of State may direct: Crime and Disorder Act 1998 s 75(7).

An offender detained in pursuance of an order made in accordance with head (A) in the text is deemed to be in legal custody: s 77(4).

23 Ibid s 77(3)(b) (see note 6 supra). As to the standard scale see PARA 517 note 4 ante.

24 See ibid s 78(1), (2) (see note 6 supra). The period for which a person to whom s 78 applies is ordered to be detained in secure accommodation must, as the court may direct, either be served before and be followed by, or be served concurrently with, any sentence imposed for the new offence and in either case must be disregarded in determining the appropriate length of that sentence: s 78(3). A person detained in pursuance of such an order is deemed to be in legal custody: s 78(5). As to the position in relation to adult offenders see PARA 617 ante.

UPDATE

656 Release, supervision and recall

NOTE 1--1982 Act s 1B repealed: Crime and Disorder Act 1998 Sch 10.

NOTES 2-4--1933 Act s 53 now Powers of Criminal Courts (Sentencing) Act 2000 ss 90-92.

NOTE 5--1991 Act Pt II (ss 32-51) repealed: Criminal Justice Act 2003 s 303(a), Sch 37 Pt 7.

1991 Act s 43(5) further amended: Criminal Justice and Immigration Act 2008 Sch 26 para 29(2); SI 2008/912.

NOTES 6-24--1998 Act ss 73-79 (in force on 1 April 2000: SI 1999/3426) consolidated in 2000 Act ss 100-106. See further table, CRIMINAL LAW, EVIDENCE AND PROCEDURE. As to the

application of provisions concerning detention and training orders, see the guidelines set out in *R v Ganley* (2000) Independent, 9 May, CA.

NOTE 7--In the 1998 Act s 74(5) (now 2000 Act s 101(9)), 'may' should read 'must'. See *R v Haringey Youth Court, ex p A* (2000) Times, 30 May, DC.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/657. Establishment of secure training centres.

(ii) Secure Training Centres

657. Establishment of secure training centres.

The Secretary of State¹ may provide secure training centres, that is to say places in which offenders not less than 12 but under 17 years of age in respect of whom secure training orders have been made² may be detained and given training and education and prepared for their release³. Rules in respect of secure training centres must provide for their inspection and the appointment of independent persons to visit them and to whom representations may be made by persons detained in such centres⁴.

Certain statutory provisions relating to prisons and prisoners also apply to secure training centres and persons detained in them⁵. Those provisions are the ones relating to:

- 239 (1) photographing and measuring⁶;
- 240 (2) removal for the purposes of an appeal or other proceedings or for medical treatment⁷; and
- 241 (3) the acquisition of land⁸.

Other provisions of the Prison Act 1952⁹ apply to secure training centres as well as to persons detained in them, subject to such adaptations and modifications as may be made by rules by the Secretary of State¹⁰. Consequently, so far as the provisions of that Act apply to such institutions, references in the Act to imprisonment include references to detention in those institutions¹¹.

1 As to the Secretary of State see PARA 505 ante.

2 Ie under the Criminal Justice and Public Order Act 1994 s 1.

3 Prison Act 1952 s 43(1)(d) (s 43 substituted by the Criminal Justice Act 1982 s 11; s 43(1)(d) added by the Criminal Justice and Public Order Act 1994 s 5). However, the Crime and Disorder Act 1998 s 73 has created detention and training orders which are due to replace secure training orders when the Crime and Disorder Act 1998 ss 73-79 come into force on a day to be appointed by the Secretary of State (see PARAS 625, 628, 656 ante). At such a date the Prison Act 1952 s 43(1)(d) will be substituted by the Crime and Disorder Act 1998 with a provision empowering the Secretary of State to provide secure training centres, ie places in which offenders in respect of whom detention and training orders have been made under s 73 may be detained and given training and education and prepared for their release: s 119, Sch 8 para 6. Initially, the detention and training order will only apply to those aged between 12 and 17 years old.

Where a detention and training order is imposed the period of detention and training is to be served in such secure accommodation as may be determined by the Secretary of State or by such other person as may be authorised by him for that purpose: s 75(1). Secure accommodation includes (1) a secure training centre; (2) a young offender institution; (3) accommodation provided by a local authority for the purpose of restricting the liberty of children and young persons; (4) accommodation provided for that purpose under the Children Act 1989 s 82(5) (financial support by the Secretary of State); or (5) such other accommodation provided for the purpose of restricting liberty as the Secretary of State may direct: Crime and Disorder Act 1998 s 75(7). See further PARA 656 ante. As to custodial sentences available in respect of young offenders see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 11, 78 et seq. As to the young offender institutions see PARAS 643-656 ante.

At the date at which this volume states the law there is one operational secure training centre, Medway, at Cookham Wood, Kent, with others awaiting construction. The Medway centre can hold a total of 40 offenders.

See the joint report of the Social Services Inspectorate, Office for Standards in Education and Her Majesty's Inspectorate of Prisons: 'Inspection of Medway Secure Training Centre' (September/October 1998).

Nothing in the Prison Act 1952 s 43 (as substituted and amended) prejudices the operation of the Criminal Justice Act 1982 s 12 (see PARA 637 ante); Prison Act 1952 s 43(7) (as so substituted).

4 Ibid s 47(4A) (added by the Criminal Justice and Public Order Act 1994 s 6). In the exercise of the power so conferred the Secretary of State has made the Secure Training Centre Rules 1998, SI 1998/472: see PARA 672 et seq post.

5 Prison Act 1952 s 43(4A) (added by the Criminal Justice and Public Order Act 1994 ss 5, 18).

Provisions relating to the following matters do not apply to secure training centres and persons detained in them: (1) annual reports issued by the Secretary of State (see the Prison Act 1952 s 5; and PARA 505 ante); (2) the appointment and functions of the Chief Inspector of Prisons (see s 5A; and PARA 508 ante); (3) Boards of Visitors (see s 6(2), (3); and PARAS 511-513 ante); (4) the place of confinement of prisoners (see s 12; and PARA 542 ante); (5) the requirements of certification and inspection of cells (see s 14; and PARAS 573, 594 ante); (6) the right of a justice of the peace to visit prisons (see s 19; and PARA 514 ante); (7) temporary discharge for ill health (see s 28; and PARA 582 ante); (8) the duty to state special reasons for closure (see s 37(2), (3); and PARA 531 ante): see s 43(5A) (as added: see note 10 infra).

6 See ibid s 16; and PARAS 502, 543 ante.

7 See ibid s 22 (as amended); and PARA 582 ante.

8 See ibid s 36 (as amended); and PARA 529 ante. In the exercise of this power land has been acquired at Medway, Onley in Northamptonshire, Medomsley in County Durham and Sharpness in Gloucestershire.

9 Ie the provisions of the Prison Act 1952 ss 1-42 (as amended), except ss 5A, 6(2), (3), 12, 14, 19, 25, 28, 37(2), (3): see s 43(5A) (as added: see note 10 infra).

10 Ibid s 43(5A) (added by the Criminal Justice and Public Order Act 1994 ss 5, 18(3)). As to rules made by the Secretary of State see the Prison Act 1952 s 47 (as amended); the Secure Training Centre Rules 1998, SI 1998/472; and PARAS 501-502 ante, 672 et seq post.

11 Prison Act 1952 s 43(6).

UPDATE

657 Establishment of secure training centres

NOTE 2--1994 Act s 1 repealed: Crime and Disorder Act 1998 Sch 10.

NOTE 3--1998 Act ss 73-79 consolidated in Powers of Criminal Courts (Sentencing) Act 2000 ss 100-106.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/658. Contracting out of secure training centres.

658. Contracting out of secure training centres.

The Secretary of State¹ may enter into a contract with another person for the provision or running (or the provision and running) by him, or (if the contract so provides) for the running by sub-contractors² of his, of any secure training centre or part of a secure training centre³. While a contract for the running of a secure training centre or part of a secure training centre is in force the centre or part must be run subject to and in accordance with the Prison Act 1952⁴ and in accordance with secure training centre rules⁵ subject to such adaptations and modifications as the Secretary of State may specify in relation to contracted-out secure training centres⁶. Where the Secretary of State grants a lease or tenancy⁷ of land for the purposes of any such contract, none of the following enactments applies to that lease⁸:

- 242 (1) Part II of the Landlord and Tenant Act 1954⁹;
- 243 (2) certain provisions of the Law of Property Act 1925¹⁰;
- 244 (3) certain provisions of the Landlord and Tenant Act 1927¹¹; and
- 245 (4) the Landlord and Tenant Act 1988¹².

1 As to the Secretary of State see PARA 505 ante.

2 'Sub-contractor', in relation to a contracted-out secure training centre, means a person who has contracted with the contractor for the running of it or any part of it: Criminal Justice and Public Order Act 1994 s 15. 'Contracted-out secure training centre' means a secure training centre or part of a secure training centre in respect of which a contract under s 7(1) is for the time being in force: s 15. For the meaning of 'secure training centre' see PARA 657 ante (definition applied by ss 7(4)(b), 15). The only existing secure training centre at the time this volume states the law, Medway, is a contracted-out centre. As to contracted-out prisons see PARA 532 et seq ante.

3 Criminal Justice and Public Order Act 1994 s 7(1). The person with whom the Secretary of State enters into such a contract is known as 'the contractor': s 15.

4 The reference to the Prison Act 1952 is a reference to that Act as it applies to secure training centres by virtue of s 43 (as amended: see PARA 657 ante) of that Act: Criminal Justice and Public Order Act 1994 s 7(4)(a). As to its application to secure training centres see PARA 657 ante.

5 The reference to secure training centre rules is a reference to rules made under the Prison Act 1952 s 47 (as amended) (see PARA 502 ante) for the regulation and management of secure training centres: see the Criminal Justice and Public Order Act 1994 ss 7(4)(b), 15. In exercise of the power so conferred the Secretary of State has made the Secure Training Centre Rules 1998, SI 1998/472: see PARA 672 et seq post. In their application to a centre which is a contracted-out secure training centre, the Secure Training Centre Rules 1998, SI 1998/472, apply with specified modifications: see PARA 672 note 8 post.

6 Criminal Justice and Public Order Act 1994 s 7(2).

7 'Lease or tenancy' includes an underlease or sub-tenancy: *ibid* s 7(3).

8 *Ibid* s 7(3).

9 *Ie* the Landlord and Tenant Act 1954 Pt II (ss 23-46) (as amended) (security of tenure): Criminal Justice and Public Order Act 1994 s 7(3)(a). See LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 708.

10 *Ie* the Law of Property Act 1925 s 146 (as amended) (restrictions on and relief against forfeiture) (see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 619): Criminal Justice and Public Order Act 1994 s 7(3)(b).

11 *Ie* the Landlord and Tenant Act 1927 s 19 (as amended) (covenants not to assign etc) (see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARAS 470, 486, 489, 498): Criminal Justice and Public Order Act 1994 s 7(3)(c).

12 le the whole of the Landlord and Tenant Act 1988 (see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARAS 490-491); Criminal Justice and Public Order Act 1994 s 7(3)(c).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/659. Officers of contracted-out secure training centres.

659. Officers of contracted-out secure training centres.

Instead of a governor, every contracted-out secure training centre¹ must have:

- 246 (1) a director, who must be a custody officer² appointed by the contractor³ and specially approved for these purposes by the Secretary of State⁴; and
- 247 (2) a monitor, who must be a Crown servant appointed by the Secretary of State⁵;

and every officer of such a secure training centre who performs custodial duties must be a custody officer who is authorised to perform such duties or an officer of a directly managed secure training centre⁶ who is temporarily attached to the secure training centre⁷.

The director has such functions as are conferred on him by the Prison Act 1952 as it applies to secure training centres⁸ and as may be conferred on him by secure training centre rules⁹. The monitor has such functions as may be conferred on him by secure training centre rules¹⁰ and is under a duty:

- 248 (a) to keep under review, and report to the Secretary of State on, the running of the secure training centre by or on behalf of the director¹¹; and
- 249 (b) to investigate, and report to the Secretary of State on, any allegations made against custody officers performing custodial duties at the secure training centre or officers of directly managed secure training centres who are temporarily attached to the secure training centre¹².

The contractor and any sub-contractor¹³ of his is each under a duty to do all that he reasonably can (whether by giving directions to the officers of the secure training centre or otherwise) to facilitate the exercise by the monitor of all such functions as are mentioned in or imposed by heads (a) or (b) above¹⁴.

1 For the meaning of 'contracted-out secure training centre' see PARA 658 note 2 ante.

2 'Custody officer' means a person in respect of whom a certificate is for the time being in force certifying:

72 (1) that he has been approved by the Secretary of State for the purpose of performing escort functions or custodial duties or both in relation to offenders in respect of whom secure training orders have been made (Criminal Justice and Public Order Act 1994 s 12(3)(a)); and

73 (2) that he is accordingly authorised to perform them (s 12(3)(b)).

As to the Secretary of State see PARA 505 ante. For the meaning of 'escort functions' see PARA 663 note 2 post. 'Custodial duties' means custodial duties at a secure training centre: Criminal Justice and Public Order Act 1994 s 15. As to secure training centres see the Prison Act 1952 s 43(1)(d) (as added); and PARA 657 text and note 3 ante. As to prisoner custody officers see PARA 528 ante.

As from a day to be appointed, head (1) supra refers also to offenders in whom respect of whom detention and training orders have been made: s 12(3)(a) (amended as from a day to be appointed by the Crime and Disorder Act 1998 s 119, Sch 8 para 111). See further PARA 657 note 3 ante).

3 For the meaning of 'contractor' see PARA 658 note 3 ante.

4 Criminal Justice and Public Order Act 1994 s 8(1)(a).

5 Ibid s 8(1)(b).

6 'Directly managed secure training centre' means a secure training centre which is not a contracted-out secure training centre: *ibid* s 15.

7 Ibid s 8(1).

8 As to the application of the Prison Act 1952 to secure training centres see ss 43(4A) (as added), (5A) (as added); and PARA 657 ante.

9 Criminal Justice and Public Order Act 1994 s 8(2). As to secure training centres see PARA 657 text and note 3 ante. As to the rules made see PARA 672 et seq post.

10 Ibid s 8(3).

11 Ibid s 8(3)(a).

12 Ibid s 8(3)(b).

13 For the meaning of 'sub-contractor' see PARA 658 note 2 ante.

14 Criminal Justice and Public Order Act 1994 s 8(4).

UPDATE

659 Officers of contracted-out secure training centres

NOTE 2--1994 Act s 12(3)(a) substituted: Offender Management Act 2007 Sch 3 para 21(b).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/660. Powers and duties of custody officers employed at contracted-out secure training centres.

660. Powers and duties of custody officers employed at contracted-out secure training centres.

A custody officer¹ performing custodial duties² at a contracted-out secure training centre³ has the following powers⁴, namely:

- 250 (1) to search, in accordance with the secure training centre rules⁵, any offender who is detained in the secure training centre⁶; and
- 251 (2) to search any other person who is in or who is seeking to enter the secure training centre, and any article in the possession of such a person⁷.

The powers conferred to search a person other than an offender must not be construed as authorising a custody officer to require a person to remove any of his clothing other than an outer coat, headgear, jacket or gloves⁸.

A custody officer performing custodial duties at a contracted-out secure training centre has the following duties as respects offenders detained in the secure training centre⁹, namely:

- 252 (a) to prevent their escape from lawful custody¹⁰;
- 253 (b) to prevent, or detect and report on, the commission or attempted commission by them of other unlawful acts¹¹;
- 254 (c) to ensure good order and discipline on their part¹²; and
- 255 (d) to attend to their well-being¹³.

The powers conferred by heads (1) and (2) above, and the powers arising by virtue of heads (a) to (d) above, include the power to use reasonable force where necessary¹⁴.

1 For the meaning of 'custody officer' see PARA 659 note 2 ante.

2 For the meaning of 'custodial duties' see PARA 659 note 2 ante.

3 For the meaning of 'contracted-out secure training centre' see PARA 658 note 2 ante.

4 Criminal Justice and Public Order Act 1994 s 9(1).

5 See the Secure Training Centre Rules 1998, SI 1998/472, r 33; and PARA 688 post. For the meaning of 'secure training centre rules' see PARA 658 note 5 ante.

6 Criminal Justice and Public Order Act 1994 s 9(1)(a). See also the Secure Training Centre Rules 1998, SI 1998/472, r 33; and PARA 688 post. For the meaning of 'secure training centre' see PARA 657 ante.

7 Criminal Justice and Public Order Act 1994 s 9(1)(b).

8 Ibid s 9(2).

9 Ibid s 9(3).

10 Ibid s 9(3)(a).

11 Ibid s 9(3)(b).

12 Ibid s 9(3)(c).

13 Ibid s 9(3)(d).

14 Ibid s 9(4).

UPDATE

660 Powers and duties of custody officers employed at contracted-out secure training centres

TEXT AND NOTES--See also 1994 Act s 9A (added by Offender Management Act 2007 s 17(3)) (power of custody officers to detain suspected offenders). See further Serious Crime Act 2007 Sch 6 para 24.

TEXT AND NOTES 6, 9--1994 Act s 9(1)(a), (3) amended: Offender Management Act 2007 Sch 3 para 20.

TEXT AND NOTES 7, 8--1994 Act s 9(1)(b), (2) amended: Offender Management Act 2007 s 16(2).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/661. Intervention by Secretary of State in the management of contracted-out secure training centres.

661. Intervention by Secretary of State in the management of contracted-out secure training centres.

The following provision applies where, in the case of a contracted-out secure training centre¹, it appears to the Secretary of State²:

- 256 (1) that the director has lost, or is likely to lose, effective control of the secure training centre or any part of it³; and
- 257 (2) that the making of an appointment as described below is necessary in the interests of preserving the safety of any person, or of preventing serious damage to any property⁴.

The Secretary of State may appoint a Crown servant to act as governor of the secure training centre⁵ for the period:

- 258 (a) beginning with the time specified in the appointment⁶; and
- 259 (b) ending with the time specified in the notice of termination⁷.

During that period:

- 260 (i) all the functions which would otherwise be exercisable by the director or monitor are exercisable by the governor⁸;
- 261 (ii) the contractor⁹ and any sub-contractor¹⁰ of his must each do all that he reasonably can to facilitate the exercise by the governor of those functions¹¹; and
- 262 (iii) the officers of the secure training centre must comply with any directions given by the governor in the exercise of those functions¹².

Where the Secretary of State is satisfied:

- 263 (A) that the governor has secured effective control of the secure training centre or, as the case may be, the relevant part of it¹³; and
- 264 (B) that the governor's appointment is no longer necessary for the purpose mentioned in head (2) above¹⁴,

he must, by a notice to the governor, terminate the appointment at a time specified in the notice¹⁵. As soon as practicable after so making or terminating an appointment, the Secretary of State must give a notice of the appointment, or a copy of the notice of termination, to the contractor, any sub-contractor of his, the director and the monitor¹⁶.

1 For the meaning of 'contracted-out secure training centre' see PARA 658 note 2 ante. For the meaning of 'secure training centre' see PARA 657 ante.

2 As to the Secretary of State see PARA 505 ante.

3 Criminal Justice and Public Order Act 1994 s 10(1)(a).

- 4 Ibid s 10(1)(b).
- 5 Ibid s 10(2).
- 6 Ibid s 10(2)(a).
- 7 Ibid s 10(2)(b). The notice of termination is given under s 10(4): see text and notes 13-15 infra.
- 8 Ibid s 10(3)(a). as to the functions of the director and monitor see PARA 659 ante.
- 9 For the meaning of 'contractor' see PARA 658 note 3 ante.
- 10 For the meaning of 'sub-contractor' see PARA 658 note 2 ante.
- 11 Criminal Justice and Public Order Act 1994 s 10(3)(b).
- 12 Ibid s 10(3)(c).
- 13 Ibid s 10(4)(a).
- 14 Ibid s 10(4)(b).
- 15 Ibid s 10(4).
- 16 Ibid s 10(5).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/662. Contracted-out functions at directly managed secure training centres.

662. Contracted-out functions at directly managed secure training centres.

The Secretary of State¹ may enter into a contract with another person for any functions at a directly managed secure training centre² to be performed by custody officers³ who are provided by that person and are authorised to perform custodial duties⁴.

1 As to the Secretary of State see PARA 505 ante.

2 For the meaning of 'directly managed secure training centre' see PARA 659 note 6 ante. For the meaning of 'secure training centre' see PARA 657 ante.

3 For the meaning of 'custody officer' see PARA 659 note 2 ante.

4 Criminal Justice and Public Order Act 1994 s 11(1). For the meaning of 'custodial duties' see PARA 659 note 2 ante. Section 9 (see PARA 660 ante) applies in relation to a custody officer performing contracted-out functions at a directly managed secure training centre as it applies in relation to such an officer performing custodial duties at a contracted-out secure training centre: s 11(2). 'Contracted-out functions' means any functions which, by virtue of a contract under s 11, fall to be performed by custody officers: s 15. For the meaning of 'contracted-out secure training centre' see PARA 658 note 2 ante. In relation to a directly managed secure training centre, the reference in the Prison Act 1952 s 13(2) (as amended) (legal custody of prisoners) (see PARA 538 ante) as it applies to secure training centres to an officer of the prison is to be construed as including a reference to a custody officer performing custodial duties at the secure training centre in pursuance of a contract under the Criminal Justice and Public Order Act 1994 s 11: s 11(3). Any reference in s 11(1)-(3) to the performance of functions or custodial duties at a directly managed secure training centre includes a reference to the performance of functions or such duties for the purposes of, or for purposes connected with, such a secure training centre: s 11(4).

UPDATE

662 Contracted-out functions at directly managed secure training centres

NOTE 4--1994 Act s 11(2) amended: Offender Management Act 2007 s 17(4).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/663. Arrangements for the escort of offenders detained at secure training centres.

663. Arrangements for the escort of offenders detained at secure training centres.

The Secretary of State¹ may make arrangements for any of the following functions², namely:

- 265 (1) the delivery of offenders³ from one set of relevant premises⁴ to another⁵;
- 266 (2) the custody of offenders held on the premises of any court (whether or not they would otherwise be in the custody of the court) and their production before the court⁶;
- 267 (3) the custody of offenders temporarily held in a secure training centre in the course of delivery from one secure training centre to another⁷; and
- 268 (4) the custody of offenders while they are outside a secure training centre for temporary purposes⁸,

to be performed in such cases as may be determined by or under the arrangements by custody officers⁹ who are authorised to perform such functions¹⁰.

Such arrangements made by the Secretary of State ('escort arrangements') may include entering into contracts with other persons for the provision by them of custody officers¹¹. Any person who, under a warrant¹² or a hospital order¹³ or hospital remand¹⁴, is responsible for the performance of any such function as is mentioned above, is deemed to have complied with the warrant, order or remand if he does all that he reasonably can to secure that the function is performed by a custody officer acting in pursuance of escort arrangements¹⁵.

1 As to the Secretary of State see PARA 505 ante.

2 The functions listed in heads (1) to (4) in the text are known as 'escort functions': Criminal Justice and Public Order Act 1994 s 15.

3 'Offender' means an offender sentenced to secure training under the Criminal Justice and Public Order Act 1994 s 1: s 12(1), Sch 1 para 4. Section 1 is repealed, as from a day to be appointed, by the Crime and Disorder Act s 120, Sch 10, and secure training is replaced by detention and training under the Crime and Disorder Act 1998 (see PARA 657 note 3 ante). Accordingly, as from a day to be appointed, 'offender' includes also offenders sentenced to detention and training: Criminal Justice and Public Order Act 1994 Sch 1 para 4 (amended as from a day to be appointed by the Crime and Disorder Act 1998 s 119, Sch 8 para 112). See further PARA 657 note 3 ante).

4 'Relevant premises' means a court, secure training centre, police station or hospital: Criminal Justice and Public Order Act 1994 Sch 1 para 1(2). For these purposes, 'secure training centre' includes:

- 74 (1) a contracted-out secure training centre (Sch 1 para 4(a));
- 75 (2) any other place to which an offender may have been committed or transferred under s 2 (Sch 1 para 4(b)).

For the meaning of 'secure training centre' generally see PARA 657 ante. For the meaning of 'contracted-out secure training centre' see PARA 658 note 2 ante. For the meaning of 'hospital' see the Mental Health Act 1983 s 145(1) (definition applied by virtue of the Criminal Justice and Public Order Act 1994 Sch 1 para 1(5)); and MENTAL HEALTH vol 30(2) (Reissue) PARA 417.

5 Criminal Justice and Public Order Act 1994 Sch 1 para 1(1)(a).

6 Ibid Sch 1 para 1(1)(b).

7 Ibid Sch 1 para 1(1)(c).

8 Ibid Sch 1 para 1(1)(d).

9 For the meaning of 'custody officer' see PARA 659 note 2 ante.

10 Criminal Justice and Public Order Act 1994 Sch 1 para 1(1).

11 Ibid Sch 1 paras 1(3), 4.

12 'Warrant' means a warrant of commitment, a warrant of arrest or a warrant under the Mental Health Act 1983 ss 46 (prospectively repealed), 47 (as amended), 48, 50 (as amended) or 74 (as amended) (see MENTAL HEALTH vol 30(2) (Reissue) PARA 535 et seq): Criminal Justice and Public Order Act 1994 Sch 1 para 1(5).

13 'Hospital order' means an order for a person's admission to hospital made under the Mental Health Act 1983 ss 37 (as amended), 38 (as amended) or 44 (see MENTAL HEALTH vol 30(2) (Reissue) PARA 486 et seq); the Criminal Procedure (Insanity) Act 1964 s 5 (as substituted); or the Criminal Appeal Act 1968 ss 6 (as substituted), 14 (as substituted), 14A (as added) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1883): Criminal Justice and Public Order Act 1994 Sch 1 para 1(5).

14 'Hospital remand' means a remand of a person to hospital under the Mental Health Act 1983 ss 35 or 36 (see MENTAL HEALTH vol 30(2) (Reissue) PARA 486 et seq): Criminal Justice and Public Order Act 1994 Sch 1 para 1(5).

15 Ibid Sch 1 para 1(4).

UPDATE

663 Arrangements for the escort of offenders detained at secure training centres

NOTE 3--Day appointed 1 April 2000: SI 1999/3426.

1994 Act s 12(1) amended: Offender Management Act 2007 Sch 3 para 21(a).
Definition of 'offender' repealed: s 35(4)(b), Sch 5 Pt 3.

TEXT AND NOTES 4-10---1994 Act Sch 1 para 1(1), (2) amended: 2007 Act s 35(2), (3).

NOTE 4--Definition of 'secure training centre' in 1994 Act Sch 1 para 4 repealed: 2007 Act s 35(4)(b), Sch 5 Pt 3.

1994 Act s 2 repealed: Crime and Disorder Act 1998 Sch 10.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/664. Monitoring etc of escort arrangements.

664. Monitoring etc of escort arrangements.

Escort arrangements¹ must include the appointment of:

- 269 (1) an escort monitor, that is to say, a Crown servant whose duty it is to keep the arrangements under review and to report on them to the Secretary of State²; and
- 270 (2) a panel of lay observers whose duty it is to inspect the conditions in which offenders³ are transported or held in pursuance of the arrangements and to make recommendations to the Secretary of State⁴.

It is also the duty of an escort monitor to investigate and report to the Secretary of State on any allegations made against custody officers⁵ acting in pursuance of escort arrangements⁶. Any expenses incurred by members of lay panels may be defrayed by the Secretary of State to such extent as he may with the approval of the Treasury determine⁷.

1 'Escort arrangements' means the arrangements specified in the Criminal Justice and Public Order Act 1994 s 12(1), Sch 1 para 1 (see PARA 663 ante): s 15.

2 Ibid Sch 1 para 2(1)(a). As to the Secretary of State see PARA 505 ante.

3 For the meaning of 'offender' see PARA 663 note 3 ante.

4 Criminal Justice and Public Order Act 1994 Sch 1 para 2(1)(b).

5 For the meaning of 'custody officer' see PARA 659 note 2 ante.

6 Criminal Justice and Public Order Act 1994 Sch 1 para 2(2).

7 Ibid Sch 1 para 2(3).

UPDATE

664 Monitoring etc of escort arrangements

TEXT AND NOTE 4--1994 Act Sch 1 para 2(1)(b) amended: Offender Management Act 2007 Sch 3 para 25.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/665. Powers and duties of custody officers acting in pursuance of escort arrangements.

665. Powers and duties of custody officers acting in pursuance of escort arrangements.

A custody officer¹ acting in pursuance of escort arrangements² has the following powers³, namely:

- 271 (1) to search, in accordance with rules made by the Secretary of State⁴, any offender⁵ for whose delivery or custody he is responsible in pursuance of the arrangements⁶; and
- 272 (2) to search any other person who is in or is seeking to enter any place where any such offender is or is to be held, and any article in the possession of such a person⁷.

A custody officer must only conduct a search of an offender when it appears necessary to do so in the interests of security, good order or discipline⁸. Where it does so appear:

- 273 (a) the offender must be searched in as seemly a manner as is consistent with discovering anything concealed⁹;
- 274 (b) he must not be searched while he is exposed to public observation unless it appears to a custody officer that that is necessary¹⁰;
- 275 (c) he must not be searched by an officer of the opposite sex¹¹;
- 276 (d) he must be searched in the presence of at least one person (being another officer or a constable) in addition to the officer carrying out the search¹²;
- 277 (e) he must not be stripped and searched in the sight or presence of any other person than the searching officer and the additional person or persons specified in head (d) above¹³;
- 278 (f) he must not be stripped and searched in the sight or presence of any person of the opposite sex¹⁴.

The powers conferred to search any person other than an offender must not be construed as authorising a custody officer to require a person to remove any of his clothing other than an outer coat, headgear, jacket or gloves¹⁵.

A custody officer has the following duties as respects offenders for whose delivery or custody he is responsible in pursuance of escort arrangements, namely:

- 279 (i) to prevent their escape from lawful custody¹⁶;
- 280 (ii) to prevent, or detect and report on, the commission or attempted commission by them of other unlawful acts¹⁷;
- 281 (iii) to ensure good order and discipline on their part¹⁸;
- 282 (iv) to attend to their wellbeing¹⁹; and
- 283 (v) to give effect to any directions as to their treatment which are given by a court²⁰,

and the Secretary of State may make rules with respect to the performance by custody officers of their duty under head (iv) above²¹.

In relation to the duty at head (iv) above an officer must at all times take into account an offender's health, both physical and mental, and any relevant history (whether of violence or self harm on the part of the offender or any other special circumstances), so far as they are known to the officer; and he must ensure that an offender is provided with medical attention where necessary and that medical advice is sought before commencing delivery where there is any doubt as to an offender's fitness to travel²². An officer must ensure that adequate supplies of food, of a suitable, wholesome and nutritious nature, and drink, are provided to the offender during the period of delivery or custody, having regard to any special dietary requirements of which the officer is aware²³. He must further ensure that an offender has an opportunity to observe any requirements of his stated religion during the period of delivery or custody²⁴.

The powers so conferred, and arising by virtue of the above provisions, include power to use reasonable force where necessary²⁵.

1 For the meaning of 'custody officer' see PARA 659 note 2 ante.

2 For the meaning of 'escort arrangements' see PARA 663 text and note 10 ante.

3 Criminal Justice and Public Order Act 1994 Sch 1 para 3(1).

4 As to the Secretary of State see PARA 505 ante. As to rules made by the Secretary of State see the Secure Training Centres (Escorts) Rules 1998, SI 1998/473, r 2 (as amended); and notes 8-14 infra. The power to make rules is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: Criminal Justice and Public Order Act 1994 Sch 1 para 3(5).

5 For the meaning of 'offender' see PARA 663 note 3 ante.

6 Criminal Justice and Public Order Act 1994 Sch 1 para 3(1)(a).

7 Ibid Sch 1 para 3(1)(b).

8 Secure Training Centres (Escorts) Rules 1998, SI 1998/473, r 2(1).

9 Ibid r 2(2).

10 Ibid r 2(3).

11 Ibid r 2(4) (r 2(4), (5) substituted, and r 2(6), (7) added, by SI 1998/1343).

12 Secure Training Centres (Escorts) Rules 1998, SI 1998/473, r 2(5) (as substituted: see note 11 supra).

13 Ibid r 2(6) (as added: see note 11 supra).

14 Ibid r 2(7) (as added: see note 11 supra).

15 Criminal Justice and Public Order Act 1994, Sch 1 para 3(2).

16 Ibid Sch 1 para 3(3)(a).

17 Ibid Sch 1 para 3(3)(b).

18 Ibid Sch 1 para 3(3)(c).

19 Ibid Sch 1 para 3(3)(d).

20 Ibid Sch 1 para 3(3)(e).

21 Ibid Sch 1 para 3(3). See the Secure Training Centres (Escorts) Rules 1998, SI 1998/473, r 3; and text and notes 22-25 infra. As to the power to make such rules see note 4 supra.

22 Ibid r 3(2).

23 Ibid r 3(3).

24 Ibid r 3(4).

25 Criminal Justice and Public Order Act 1994 Sch 1 para 3(4).

UPDATE

665 Powers and duties of custody officers acting in pursuance of escort arrangements

TEXT AND NOTES 6, 7, 21--1994 Act Sch 1 para 3(1)(a), (b), (3) amended: Offender Management Act 2007 Sch 3 para 26.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/666. Issue of certificates.

666. Issue of certificates.

A person cannot act as a custody officer until he has had issued to him a certificate by the Secretary of State¹. Any person may apply to the Secretary of State for the issue of a certificate in respect of him². The Secretary of State must not issue a certificate on any such application unless he is satisfied that³ the applicant:

- 284 (1) is a fit and proper person to perform the relevant functions⁴; and
- 285 (2) has received training to such standard as he may consider appropriate for the performance of those functions⁵.

Where the Secretary of State issues a certificate, then, subject to any suspension⁶ or revocation⁷, it continues in force until such date or the occurrence of such event as may be specified in the certificate⁸. A certificate authorising the performance of both escort functions and custodial duties may specify different dates or events as respects those functions and duties respectively⁹.

1 As to the requirement for a certificate see definition of 'custody officer' in the Criminal Justice and Public Order Act 1994 s 12(3); para 659 note 2 ante. As to the Secretary of State see PARA 505 ante. 'Certificate' means a certificate under the Criminal Justice and Public Order Act 1994 s 12(3) (see PARA 659 ante): Sch 2 para 1.

2 Ibid Sch 2 para 2(1).

3 Ibid Sch 2 para 2(2).

4 Ibid Sch 2 para 2(2)(a). 'The relevant functions', in relation to a certificate, means the escort functions or custodial duties authorised by the certificate: Sch 2 para 1. For the meaning of 'escort functions' see PARA 663 note 2 ante. For the meaning of 'custodial duties' see PARA 659 note 2 ante.

5 Ibid Sch 2 para 2(2)(b).

6 Ie under ibid Sch 2 para 3 (see PARA 667 post): see Sch 2 para 2(3).

7 Ie under ibid Sch 2 para 4 (see PARA 668 post): see Sch 2 para 2(3).

8 Ibid Sch 2 para 2(3).

9 Ibid Sch 2 para 2(4).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/667. Suspension of certificate.

667. Suspension of certificate.

Where at any time,

- 286 (1) in the case of a custody officer¹ acting in pursuance of escort arrangements², it appears to the escort monitor³ that the officer is not a fit and proper person to perform escort functions⁴;
- 287 (2) in the case of a custody officer performing custodial duties⁵ at a contracted-out secure training centre⁶, it appears to the person in charge of the secure training centre⁷ that the officer is not a fit and proper person to perform custodial duties⁸; or
- 288 (3) in the case of a custody officer performing contracted-out functions⁹ at a directly managed secure training centre¹⁰, it appears to the person in charge of that secure training centre that the officer is not a fit and proper person to perform custodial duties¹¹,

the escort monitor or person in charge may:

- 289 (a) refer the matter to the Secretary of State¹² for a decision¹³; and
- 290 (b) in such circumstances as may be prescribed by regulations made by the Secretary of State, suspend the officer's certificate¹⁴ so far as it authorises the performance of escort functions or, as the case may be, custodial duties pending that decision¹⁵.

Regulations provide that a certificate may be suspended where:

- 291 (i) an allegation has been made against a custody officer as described in heads (1) to (3) above¹⁶;
- 292 (ii) such an officer has been charged with a criminal offence or disciplinary action is being taken against him by his employer¹⁷;
- 293 (iii) it appears to the escort monitor, or as the case may be the person in charge of the secure training centre that the officer is, by reason of physical or mental illness, or for any other reason, incapable of satisfactorily carrying out his duties¹⁸; and
- 294 (iv) the escort monitor, or as the case may be, person in charge of the secure training centre considers that the suspension of the certificate would be conducive to the performance of escort functions, or as the case may be, the maintenance of order and discipline in the secure training centre¹⁹.

1 For the meaning of 'custody officer' see PARA 659 note 2 ante.

2 For the meaning of 'escort arrangements' see PARA 663 text and note 10 ante.

3 For the meaning of 'escort monitor' see PARA 664 text and note 2 ante.

4 Criminal Justice and Public Order Act 1994 s 12(2), Sch 2 para 3(1)(a). For the meaning of 'escort functions' see PARA 663 note 2 ante.

5 For the meaning of 'custodial duties' see PARA 659 note 2 ante.

- 6 For the meaning of 'contracted-out secure training centre' see PARA 658 note 2 ante.
- 7 For the meaning of 'secure training centre' see PARA 657 ante. See also PARA 662 ante.
- 8 Criminal Justice and Public Order Act 1994 Sch 2 para 3(1)(b).
- 9 For the meaning of 'contracted-out functions' see PARA 662 note 4 ante.
- 10 For the meaning of 'directly managed secure training centre' see PARA 659 note 6 ante.
- 11 Criminal Justice and Public Order Act 1994 Sch 2 para 3(1)(c).
- 12 As to the Secretary of State see PARA 505 ante.
- 13 Sch 2 para 3(2)(a). The matter is referred under the Criminal Justice and Public Order Act 1994 Sch 2 para 4 (see PARA 668 post).
- 14 For the meaning of 'certificate' see PARA 666 note 1 ante.
- 15 Criminal Justice and Public Order Act 1994 Sch 2 para 3(2)(b). The power to make regulations is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: Sch 2 para 3(3). In exercise of the power so conferred the Secretary of State has made the Criminal Justice and Public Order Act 1994 (Suspension of Custody Officer Certificate) Regulations 1998, SI 1998/474.
- 16 Ibid reg 2(a)(i).
- 17 Ibid reg 2(a)(ii).
- 18 Ibid reg 2(a)(iii).
- 19 Criminal Justice and Public Order Act 1994 (Suspension of Custody Officer Certificate) Regulations 1998, SI 1998/474, reg 2(b).

UPDATE

667 Suspension of certificate

TEXT AND NOTE 16--After 'an allegation' add 'of misconduct': SI 1998/474 reg 2(a)(i) amended: SI 2006/1050.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/668. Revocation of certificate.

668. Revocation of certificate.

Where at any time it appears to the Secretary of State¹ that a custody officer² is not a fit and proper person to perform escort functions³ or custodial duties⁴, he may revoke that officer's certificate⁵ so far as it authorises the performance of those functions or duties⁶.

- 1 As to the Secretary of State see PARA 505 ante.
- 2 For the meaning of 'custody officer' see PARA 659 note 2 ante.
- 3 For the meaning of 'escort functions' see PARA 663 note 2 ante.
- 4 For the meaning of 'custodial duties' see PARA 659 note 2 ante.
- 5 For the meaning of 'certificate' see PARA 666 note 1 ante.
- 6 Criminal Justice and Public Order Act 1994 s 12(2), Sch 2 para 4.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/669. False statements.

669. False statements.

If any person, for the purpose of obtaining a certificate¹ for himself or for any other person (1) makes a statement which he knows to be false in a material particular; or (2) recklessly makes a statement which is false in a material particular, he is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale².

1 For the meaning of 'certificate' see PARA 666 note 1 ante.

2 See Criminal Justice and Public Order Act 1994 s 12(2), Sch 2 para 5. As to similar provisions in relation to prisoner custody officers see PARA 528 ante. As to the standard scale see PARA 517 note 4 ante.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/670. Protection of custody officers at secure training centres.

670. Protection of custody officers at secure training centres.

Any person who assaults a custody officer¹ who is:

- 295 (1) acting in pursuance of escort arrangements²;
- 296 (2) performing custodial duties³ at a contracted-out secure training centre⁴; or
- 297 (3) performing contracted-out functions⁵ at a directly managed secure training centre⁶,

is liable on summary conviction to a fine not exceeding level 5 on the standard scale⁷ or to imprisonment for a term not exceeding six months or to both⁸. Any person who resists or wilfully obstructs a custody officer performing such functions is liable on summary conviction to a fine not exceeding level 3 on the standard scale⁹.

1 For the meaning of 'custody officer' see PARA 659 note 2 ante.

2 Criminal Justice and Public Order Act 1994 s 13(1)(a). For the meaning of 'escort arrangements' see PARA 663 note 2 ante. A custody officer is not regarded as acting in pursuance of escort arrangements at any time when he is not readily identifiable as such an officer (whether by means of a uniform or badge which he is wearing or otherwise): s 13(3).

3 For the meaning of 'custodial duties' see PARA 659 note 2 ante.

4 Criminal Justice and Public Order Act 1994 s 13(1)(b).

5 For the meaning of 'contracted-out functions' see PARA 662 note 4 ante.

6 Criminal Justice and Public Order Act 1994 s 13(1)(c). For the meaning of 'directly managed secure training centre' see PARA 659 note 6 ante.

7 As to the standard scale see PARA 517 note 4 ante.

8 Criminal Justice and Public Order Act 1994 s 13(1).

9 Ibid s 13(2).

UPDATE

670 Protection of custody officers ...

TEXT AND NOTES--Criminal Justice and Public Order Act 1994 s 13 amended: Offender Management Act 2007 Sch 3 para 22, Sch 5 Pt 3.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/671. Wrongful disclosure of information relating to offenders detained at secure training centres.

671. Wrongful disclosure of information relating to offenders detained at secure training centres.

A person who:

- 298 (1) is or has been employed (whether as a custody officer¹ or otherwise) in pursuance of escort arrangements² or at a contracted-out secure training centre³; or
- 299 (2) is or has been employed to perform contracted-out functions⁴ at a directly managed secure training centre⁵,

commits an offence if he discloses, otherwise than in the course of his duty or as authorised by the Secretary of State⁶, any information which he acquired in the course of his employment and which relates to a particular offender detained at a secure training centre⁷.

A person guilty of such an offence is liable:

- 300 (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both⁸;
- 301 (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum⁹ or both¹⁰.

1 For the meaning of 'custody officer' see PARA 659 note 2 ante.

2 For the meaning of 'escort arrangements' see PARA 663 note 2 ante.

3 Criminal Justice and Public Order Act 1994 s 14(1)(a). For the meaning of 'contracted-out secure training centre' see PARA 658 note 2 ante.

4 For the meaning of 'contracted-out functions' see PARA 662 note 4 ante.

5 Criminal Justice and Public Order Act 1994 s 14(1)(b). For the meaning of 'directly managed secure training centre' see PARA 659 note 6 ante.

6 As to the Secretary of State see PARA 505 ante.

7 Criminal Justice and Public Order Act 1994 s 14(1).

8 Ibid s 14(2)(a).

9 As to the statutory maximum see PARA 524 note 19 ante.

10 Criminal Justice and Public Order Act 1994 s 14(2)(b).

UPDATE

671 Wrongful disclosure of information relating to [persons detained in youth detention accommodation]

TEXT AND NOTES--References to offenders detained at secure training centres now to persons detained in youth detention accommodation: Criminal Justice and Public Order Act 1994 s 14 (amended by Offender Management Act 2007 Sch 3 para 23).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/672. Rules for secure training centres.

672. Rules for secure training centres.

The Secretary of State¹ may make, and has made, rules in respect of secure training centres for the same purposes as in respect of prisons² save that rules in respect of secure training centres must provide for their inspection and the appointment of independent persons to visit them and to whom representations may be made by offenders detained in such centres³. Such rules are statutory instruments⁴ and are laid before Parliament and subject to annulment in pursuance of a resolution of either House of Parliament⁵.

The governor⁶ of a centre may, with the leave of the Secretary of State, delegate any of his powers and duties under the Secure Training Centre Rules 1998 to another officer of the centre⁷.

In their application to contracted-out secure training centres, the Secure Training Centre Rules are subject to modification⁸. In particular, for any reference to the governor there must be substituted a reference to the director⁹ and for any reference to an officer there must be substituted a reference to a custody officer¹⁰. In addition to the rules authorising or requiring the governor to do any act, the director appointed by the contractor in relation to any contracted-out centre has the following additional functions:

- 302 (1) to promote and safeguard the welfare of trainees detained in that centre¹¹;
- 303 (2) to co-operate with the monitor appointed in relation to that centre and to facilitate the discharge by him of his duties and functions¹²; and
- 304 (3) to issue a notice to each trainee prior to his release from the centre which specifies the requirements with which he must comply following his release¹³.

1 As to the Secretary of State see PARA 505 ante.

2 See the Prison Act 1952 s 47(1) (amended by the Criminal Justice and Public Order Act 1994 s 6); and PARAS 501-502 ante. In the exercise of the power so conferred the Secretary of State has made the Secure Training Centre Rules 1998, SI 1998/472. A copy of the Rules must be made available to any trainee, or to any parent of a trainee, who requests it: r 7(3). 'Trainee' means a person detained in a secure training centre: r 2.

3 Prison Act 1952 s 47(4A) (added by the Criminal Justice and Public Order Act 1994 s 6).

4 See the Prison Act s 52(1); and PARA 502 ante.

5 See *ibid* s 52(2) (amended by the Criminal Justice Act 1967 ss 66(4), 103(2), Sch 7 Pt I).

6 In the case of a contracted-out secure training centre (see PARA 658 et seq ante), the relevant person is the director (see PARA 657 ante): Secure Training Centre Rules 1998, SI 1998/472, r 46(2).

7 *Ibid* r 45.

8 See *ibid* r 46. Most of the modifications relate to the role of the monitor: see r 45A(1) (r 45A added by r 46(14)), r 46(4)-(13). As to contracted-out secure training centres see PARA 658 et seq ante; and as to monitors see PARA 659 ante.

9 See *ibid* r 46(2).

10 See *ibid* r 46(3).

11 *Ibid* r 45A(2)(b)(i) (as added: see note 8 supra).

12 Ibid r 45A(2)(b)(ii) (as added: see note 8 supra).

13 Ibid r 45A(2)(b)(iii) (as added: see note 8 supra).

UPDATE

672 Rules for secure training centres

TEXT AND NOTES--Functions under the Prison Act 1952 s 47 in relation to education, training and libraries, so far as exercisable in relation to Wales, are transferred to the Welsh Ministers: Welsh Ministers (Transfer of Functions) Order 2009, SI 2009/703.

TEXT AND NOTE 13--In head (3) the reference to each trainee is now to each convicted trainee: SI 1998/472 r 45A(2)(b)(iii) (amended by SI 2003/3005). 'Convicted trainee' means a trainee who has been ordered to be detained in consequence of his conviction for an offence, and the expression 'unconvicted trainee' is to be construed accordingly: SI 1998/472 r 2 (definition added by SI 2003/3005).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/673. Similarities in rules regulating prisons and young offender institutions.

673. Similarities in rules regulating prisons and young offender institutions.

The rules relating to the duties and conduct of officers of secure training centres¹, control of persons or vehicles², and the viewing of secure training centres³ are in the same terms as those for prison officers and prisons. Similar rules apply in the case of the death of a trainee as in the case of the death of a prisoner⁴. The rules as to custody during removal and protection from public view resemble those for prisoners⁵.

1 Secure Training Centre Rules 1998, SI 1998/472, r 39. As to the duties of prison officers see PARA 516 ante. As to the rules relating to young offenders institutions see PARA 643 et seq ante.

2 See *ibid* r 41.

3 See *ibid* r 42.

4 See *ibid* r 25. As to the death of a prisoner see PARA 631 ante. For the meaning of 'trainee' see PARA 672 note 2 ante.

5 See *ibid* r 32; and PARA 538 ante.

UPDATE

673 Similarities in rules regulating prisons and young offender institutions

NOTE 3--SI 1998/472 r 42 amended: SI 2003/3005.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/674. Aims of secure training centres.

674. Aims of secure training centres.

The aims of secure training centres¹ are (1) to accommodate trainees² in a safe environment within secure conditions; and (2) to help them to prepare for their return to the outside community³. The aim referred to in head (2) above must be achieved in particular by:

- 305 (a) providing a positive regime offering high standards of education and training⁴;
- 306 (b) establishing a programme designed to tackle the offending behaviour of each trainee and to assist his development⁵;
- 307 (c) fostering links between the trainee and the outside community⁶; and
- 308 (d) co-operating with the services responsible for the trainee's supervision after release⁷.

A statement of the centre's aims and how they are to be achieved must be prepared and displayed in each centre and is to be made available on request to trainees and any persons visiting or inspecting the centre⁸.

1 For the meaning of 'secure training centre' see PARA 657 ante.

2 For the meaning of 'trainee' see PARA 672 note 2 ante.

3 Secure Training Centre Rules 1998, SI 1998/472, r 3(1).

4 Ibid r 3(2)(a).

5 Ibid r 3(2)(b).

6 Ibid r 3(2)(c).

7 Ibid r 3(2)(d).

8 Ibid r 3(3). As to persons visiting see PARA 683 post. As to inspections see PARA 690 post.

UPDATE

674 Aims of secure training centres

TEXT AND NOTES 5, 7--Heads (b) and (d) apply in the case of convicted trainees only: SI 1998/472 r 3(2)(b), (d) (both amended by SI 2003/3005). For the meaning of 'convicted trainee' see PARA 672 NOTE 13.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/675. Reception; trainees' property.

675. Reception; trainees' property.

Every trainee¹ must be searched on his reception into a secure training centre². The procedure on reception is the same as in a prison³, subject to a number of additional requirements reflecting the youth of trainees. Thus as soon as possible after reception into the centre, and in any case within 24 hours:

- 309 (1) a trainee must be interviewed by a social worker and by a member of the healthcare staff with a view to assessing whether and, if so, the extent to which he has suicidal intentions or a propensity to harm himself⁴;
- 310 (2) a trainee must be provided with information in writing about those provisions of the Secure Training Centre Rules and other matters which it is necessary that he should know, including privileges, incentives and sanctions, contact with members of his family or independent persons and the proper method of using the grievance procedure⁵; and the governor⁶ or an officer deputed by him must explain the information so provided so that he can understand his rights and obligations⁷.

Anything, other than cash, which a trainee has at a centre, and which he is not allowed to retain for his own use, must be taken into the governor's custody and listed on an inventory⁸. Any cash which a trainee has at a centre must be paid into an account under the control of the governor, and the trainee must be credited with the amount on the centre's books⁹.

1 For the meaning of 'trainee' see PARA 672 note 2 ante.

2 See the Secure Training Centre Rules 1998, SI 1998/472, r 33(1). As to the manner in which searches are to be conducted see PARAS 665 ante, 688 post. For the meaning of 'secure training centre' see PARA 657 ante.

3 See *ibid* rr 7, 34, 35. As to reception of prisoners and information to be provided to them see PARAS 542, 547 ante.

4 *Ibid* r 23(1). A written assessment must be prepared as soon as practicable after such an interview is concluded: r 23(2).

5 *Ibid* r 7(1).

6 Or, in the case of a contracted-out secure training centre (see PARA 658 et seq ante), the director: *ibid* r 46(2). As to directors see PARA 659 ante.

7 *Ibid* r 7(2).

8 *Ibid* r 35(1). As to the governor's powers to confiscate unauthorised articles see PARA 688 post.

9 *Ibid* r 35(2).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/676. Classification.

676. Classification.

Trainees¹ may be classified in accordance with any directions of the Secretary of State² taking into account their ages, characters and circumstances³.

1 For the meaning of 'trainee' see PARA 672 note 2 ante.

2 As to the Secretary of State see PARA 505 ante.

3 Secure Training Centre Rules 1998, SI 1998/472, r 4.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/677. After care.

677. After care.

From the beginning of his period of detention, consideration must be given, in consultation with the appropriate supervising service, to a trainee's¹ future and the help to be given to him in preparation for and after his return to the community². Every trainee must be given a careful explanation of his liability to supervision after release and the requirements to which he will be subject while under supervision³. The training plan⁴ prepared for a trainee must have regard to the need to help him in preparation for and after his return to the community and, in the case of a trainee who will be of compulsory school age at the date of that return, to education in the community⁵.

- 1 For the meaning of 'trainee' see PARA 672 note 2 ante.
- 2 Secure Training Centre Rules 1998, SI 1998/472, r 30(1).
- 3 Ibid r 30(2). As to release and supervision of trainees see PARA 689 post.
- 4 See ibid r 27; and PARA 686 post.
- 5 Ibid r 30(3).

UPDATE

677 After care

TEXT AND NOTES 1, 2--Consultation is to be with, in the case of a convicted trainee, the appropriate supervising service and, in the case of an unconvicted trainee, an officer of the local authority which is looking after the trainee, within the meaning of the Children Act 1989 s 22(1) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 867): SI 1998/472 r 30(1) (substituted by SI 2003/3005). For the meaning of 'convicted trainee' see PARA 672 NOTE 13

TEXT AND NOTE 3--Now applies only to every convicted trainee: SI 1998/472 r 30(2) (amended by SI 2003/3005).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/678. Temporary release.

678. Temporary release.

A trainee¹ may be released temporarily for any period or periods and subject to any conditions². A trainee so released may be recalled at any time whether any conditions of his release have been broken or not³.

1 For the meaning of 'trainee' see PARA 672 note 2 ante.

2 Secure Training Centre Rules 1998, SI 1998/472, r 5(1).

3 Ibid r 5(2).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/679. Physical welfare.

679. Physical welfare.

Every trainee¹ must be provided with toilet articles necessary for his health and cleanliness, which are to be replaced as necessary² and is entitled to have a hot bath or shower once every day³. A trainee's hair is not to be cut without his consent except where the medical officer directs that it is necessary for health or cleanliness⁴. Trainees are permitted to wear their own clothes at all times⁵ unless the governor refuses permission where he considers that they are unsuitable, in which case he must inform the trainee of the reason for the decision⁶. Suitable clothing must be provided by the centre which is adequate for warmth and health if the trainee is not able or does not wish to provide his own, if the governor has refused permission for a trainee to wear his own clothes, or for the purposes of participation in an activity for which the clothing provided by the trainee is inadequate⁷.

The rules relating to food are in similar terms to those applicable to prisons⁸ save that in addition the governor must ensure that meals are provided three times a day at regular intervals and that at each main meal there is a choice for each course, one of which is to be hot at one of those meals⁹. The governor must further ensure that any special dietary need of a trainee which is due to his health, religious persuasion, racial origin or cultural background, is met¹⁰. The rules relating to medical services are in similar terms to those applicable to prisons¹¹. In addition the medical officer must inform the governor immediately he suspects a trainee of having suicidal intentions or a propensity to harm himself, and the trainee must be placed under special observation¹². The initial assessment conducted as soon as possible after a trainee's reception, of the risk which he presents of self harm¹³, is to be reviewed at regular intervals throughout the period of his detention in the centre and each trainee must be monitored by a social worker or a member of the healthcare staff for that purpose¹⁴.

Trainees are prohibited absolutely from taking alcohol or tobacco¹⁵. Alcohol must not be available anywhere at a secure training centre¹⁶. No trainee is allowed to smoke or to have any tobacco or tobacco products in his possession¹⁷. Tobacco may be smoked only in a designated smoking room set aside for use by officers, other members of staff or visitors¹⁸.

Every trainee must be provided with his own room¹⁹ but no room may be used as sleeping accommodation for a trainee unless it has been approved by the Secretary of State²⁰ as fit for the purpose²¹. Male and female trainees must be accommodated in separate sleeping accommodation and are to be provided with separate toilet and bathing facilities²². Every trainee must be provided with a separate bed and separate bedding adequate for warmth and health²³.

Information of the death, serious illness, serious injury, or removal to hospital on account of mental disorder of a trainee must be given by the governor to the trainee's parent or guardian, and any other person whom he has reasonably asked to be so informed²⁴. In the case of a contracted-out secure training centre, the director must also inform the monitor²⁵. In such a case, where the notification relates to serious harm suffered by the trainee or it is alleged that he has been subject to any form of abuse, notification must also be given to a constable, and if, in the opinion of the director such harm or abuse is caused by the conduct of any custody officer or other member of the staff of the centre, the monitor²⁶.

1 For the meaning of 'trainee' see PARA 672 note 2 ante.

2 Secure Training Centre Rules 1998, SI 1998/472, r 20(1).

- 3 Ibid r 20(2).
- 4 Ibid r 20(3).
- 5 Ibid r 15(1).
- 6 See ibid r 15(2). In a contracted-out secure training centre, a trainee may appeal any decision not to permit the trainee to wear his own clothes to the monitor: see rr 15(2), 46(7). For the meaning of 'contracted-out secure training centre' see PARA 658 ante; and for the meaning of 'secure training centre' see PARA 657 ante. In a contracted-out secure training centre, instead of a governor there is a director: see PARA 659 ante. For the meaning of 'monitor' see PARA 659 ante.
- 7 Ibid r 15(3).
- 8 See ibid r 16. As to food in prisons see PARA 574 ante.
- 9 Ibid r 16(2).
- 10 Ibid r 16(3). In practice similar provision is made in prisons by way of Standing Orders: see PARA 574 ante.
- 11 See ibid rr 22, 24, 25, 27(6). As to medical services in prisons see PARA 580 ante.
- 12 Ibid r 24(3). In the case of a contracted-out secure training centre (see PARA 658 et seq ante), the monitor must be informed as soon as practicable and in any event within 12 hours of any trainee having been placed under special observation: rr 24(4), 46(8). Cf the Prison Rules 1999, SI 1999/728, which do not make special provision in respect of prisoners' suicide risk. In practice the Prison Rules are supplemented by a detailed policy on the management of prisoners who present a suicide risk: see 'Caring for the Suicidal in Custody' HM Prison Service; and PARA 580 ante.
- 13 As to reception see PARA 675 ante.
- 14 Secure Training Centre Rules 1998, SI 1998/472, r 23(3).
- 15 See ibid r 17.
- 16 Ibid r 17(1).
- 17 Ibid r 17(2).
- 18 Ibid r 17(3).
- 19 Ibid r 18(1).
- 20 As to the Secretary of State see PARA 505 ante.
- 21 Secure Training Centre Rules 1998, SI 1998/472, r 18(2).
- 22 Ibid r 18(3).
- 23 Ibid r 19.
- 24 Ibid r 25(1).
- 25 Ibid rr 25(1), 46(9)(a).
- 26 Ibid rr 25(3), 46(9)(b).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/680. Grievance procedure.

680. Grievance procedure.

There must be established and administered at each secure training centre¹ a comprehensive grievance procedure, approved by the Secretary of State², to which each trainee³ and his parent are to have access⁴. Every request by a trainee to see the governor⁵ or an independent person⁶ must be recorded by the officer to whom it is made and promptly passed on to the governor⁷, and every day the governor must hear any such requests made in respect of him⁸. Where the request is to see an independent person the governor must ensure that that person is told as soon as possible⁹. A written request or complaint under the grievance procedure may be made in confidence¹⁰. In the case of a contracted-out secure training centre, where a person is dissatisfied with the outcome of any request or complaint made under the grievance procedure, he may appeal to the monitor¹¹, who must thereupon consider the request or complaint, and any such appeal may be made in confidence¹².

1 For the meaning of 'secure training centre' see PARA 657 ante.

2 As to the Secretary of State see PARA 505 ante.

3 For the meaning of 'trainee' see PARA 672 note 2 ante.

4 Secure Training Centre Rules 1998, SI 1998/472, r 8(1).

5 Or, in the case of a contracted-out secure training centre, the director: *ibid* r 46(2). As to contracted-out secure training centres see PARA 658 et seq ante. As to directors see PARA 659 ante.

6 As to the appointment of independent persons see PARA 691 post.

7 Secure Training Centre Rules 1998, SI 1998/472, r 8(2).

8 *Ibid* r 8(3).

9 *Ibid* r 8(4).

10 *Ibid* r 8(5).

11 As to monitors see PARA 659 ante.

12 Secure Training Centre Rules 1998, SI 1998/472, rr 8(6), 46(5).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/681. Privileges.

681. Privileges.

There must be established at every secure training centre¹ systems of privileges, incentives and sanctions approved by the Secretary of State² and appropriate to the classes of trainees³ and their ages, characters and circumstances⁴. Records must be kept in writing of any privileges or incentives earned and sanctions awarded⁵. Where the centre is contracted out⁶, the monitor⁷ must be entitled to have access to such records⁸.

1 For the meaning of 'secure training centre' see PARA 657 ante.

2 As to the Secretary of State see PARA 505 ante.

3 For the meaning of 'trainee' see PARA 672 note 2 ante.

4 Secure Training Centre Rules 1998, SI 1998/472, r 6(1).

5 Ibid r 6(2).

6 For the meaning of 'contracted-out secure training centre' see PARA 658 note 2 ante.

7 For the meaning of 'monitor' see PARA 659 ante.

8 Secure Training Centre Rules 1998, SI 1998/472, rr 6(2), 46(4).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/682. Communications generally.

682. Communications generally.

The governor¹ must encourage links between the centre and the community by taking steps to establish and maintain relations with suitable persons and agencies outside the centre². He must ensure that special attention is paid to the maintenance of such relations between a trainee³ and his family as seem in the best interests of the trainee⁴. Where any restriction on contact of any kind between a trainee and his family is deemed necessary by the governor it is to be imposed in consultation with the trainee, his family and the services responsible for his supervision after release⁵ and, in the case of a contracted-out secure training centre⁶, is subject to the approval of the monitor⁷. In any case where for any reason contact is not maintained between a trainee and his family, the governor must appoint an independent person to visit or befriend that trainee⁸.

1 Or, in the case of a contracted-out secure training centre, the director: see the Secure Training Centre Rules 1998, SI 1998/472, r 46(2); and PARA 672 ante. As to contracted-out secure training centres see PARA 658 et seq ante. For the meaning of 'secure training centre' see PARA 657 ante. As to directors see PARA 659 ante.

2 Secure Training Centre Rules 1998, SI 1998/472, r 29(1).

3 For the meaning of 'trainee' see PARA 672 note 2 ante.

4 Secure Training Centre Rules 1998, SI 1998/472, r 29(2).

5 Ibid r 29(3). As to supervision after release see PARA 689 post.

6 As to contracted-out secure training centres see PARA 658 et seq ante.

7 Secure Training Centre Rules 1998, SI 1998/472, rr 29(3), 46(10). As to monitors see PARA 659 ante.

8 Ibid r 29(4). As to the appointment of independent persons see PARA 691 post.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/683. Personal visits.

683. Personal visits.

There must be established at every secure training centre¹ arrangements, approved by the Secretary of State², for trainees³ to receive visits⁴. Such arrangements must take account of the importance of contact by a trainee with his family and the need to keep to a minimum any disruption of his education and training⁵. Subject to the provisions of the Secure Training Centre Rules 1998⁶, the governor⁷ may give such directions as he thinks fit for the supervision of visits to trainees, either generally or in a particular case⁸, provided that such directions are designed to secure that supervision is not unnecessarily intrusive⁹. As a minimum a trainee is entitled to receive one visit a week¹⁰, the normal duration of which is to be one hour¹¹. Subject to the provisions of the Secure Training Centre Rules 1998, a trainee may receive visits additional to this minimum entitlement¹².

1 For the meaning of 'secure training centre' see PARA 657 ante.

2 As to the Secretary of State see PARA 505 ante.

3 For the meaning of 'trainee' see PARA 672 note 2 ante.

4 Secure Training Centre Rules 1998, SI 1998/472, r 9(1).

5 Ibid r 9(2).

6 Ie the Secure Training Centre Rules 1998, SI 1998/472.

7 Or, in the case of a contracted-out secure training centre (see PARA 658 et seq ante), the director: see ibid r 46(2); and PARA 672 ante. As to directors see PARA 659 ante.

8 Ibid r 9(3).

9 Ibid r 9(3) proviso.

10 Ibid r 11(1)(b).

11 Ibid r 11(3).

12 See ibid r 11(2).

UPDATE

683 Personal visits

NOTE 6--SI 1998/472 amended: SI 2003/3005.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/684. Personal letters and telephone calls.

684. Personal letters and telephone calls.

The Secretary of State¹ may with a view to securing discipline and good order or the prevention of crime and in the interests of any persons impose restrictions, either generally or in the particular case, upon the communications to be permitted between a trainee² and other persons³. Except where provided by statute or in the Secure Training Centre Rules 1998⁴ a trainee is not permitted to communicate with any outside person, or that person with him, without leave of the Secretary of State⁵. Unless otherwise prohibited by the Secure Training Centre Rules 1998, every letter or communication to or from a trainee may be examined by the governor⁶ or any officer deputed by him, and the governor may, at his discretion, stop any communication on the ground that its contents are objectionable or of inordinate length⁷, save that in the case of a contracted-out secure training centre no communication may be read, examined or stopped without the authority of the monitor⁸.

A trainee may send three letters a week, the cost of which must be met by the centre⁹. He may in addition, and subject to the Secure Training Centre Rules 1998, send any number of letters at his own expense, receive any number of letters and make and receive any number of telephone calls at his own expense¹⁰.

1 As to the Secretary of State see PARA 505 ante.

2 For the meaning of 'trainee' see PARA 672 note 2 ante.

3 Secure Training Centre Rules 1998, SI 1998/472, r 10(1).

4 Ie the Secure Training Centre Rules 1998, SI 1998/472.

5 Ibid r 10(2). As to other communications permitted by the rules see PARA 685 post.

6 Or, in the case of a contracted-out secure training centre (see PARA 658 et seq ante), the director: see ibid r 46(2); and PARA 672 ante. For the meaning of 'secure training centre' see PARA 657 ante. As to directors see PARA 659 ante.

7 Ibid r 10(3). As to special provisions relating to legal correspondence see PARA 685 post. As to a prisoner's legal correspondence see PARA 606-607 ante.

8 Ibid rr 10(4), 46(6). For the meaning of 'monitor' see PARA 659 ante.

9 Ibid r 11(1)(a).

10 Ibid r 11(2).

UPDATE

684 Personal letters and telephone calls

TEXT AND NOTE 4--Words 'by statute or' omitted: SI 1998/472 r 10(2) (amended by SI 2003/3005).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/685. Other communications.

685. Other communications.

The provisions relating to communications by trainees¹ in secure training centres² with legal advisers³ and the courts⁴ and interviews by the police⁵ are the same as apply in prisons.

1 For the meaning of 'trainee' see PARA 672 note 2 ante.

2 For the meaning of 'secure training centre' see PARA 657 ante.

3 'Legal adviser' means, in relation to a trainee, his counsel or solicitor and includes a clerk acting on behalf of his solicitor: Secure Training Centre Rules 1998, SI 1998/472, r 2. As to a prisoner's access to legal advice see PARAS 606-607 ante.

4 See *ibid* rr 13, 14, 22(4).

5 See *ibid* r 12. As to police interviews with prisoners see PARA 591 ante.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/686. Regime activities and education.

686. Regime activities and education.

A trainee¹ must be occupied in education, training, physical education and programmes designed to tackle offending behaviour provided in accordance with the aims of secure training centres². For the purpose of determining the appropriate activities for any individual trainee each trainee must be assessed as soon as practicable after his reception, and within two weeks of that date a training plan must be prepared³. The training plan for each trainee must be reviewed:

- 311 (1) in the case of a trainee who is ordered to be detained for a period of six months or less, every two months⁴; and
- 312 (2) in the case of a trainee who is ordered to be detained for more than six months, every three months⁵.

The preparation and reviewing of a training plan must be undertaken in consultation with:

- 313 (a) the services responsible for the trainee's supervision after release⁶; and
- 314 (b) the trainee's parent or guardian⁷.

An officer of the centre must be nominated by the governor⁸ for the purposes of preparing, supervising and reviewing the training plan of each trainee and for carrying out the consultations described above⁹. The medical officer or a member of the healthcare staff may excuse a trainee from any activity on medical grounds; and no trainee must be set to participate in any activity for which he is considered by the medical officer, or as the case may be, member of healthcare staff, to be unfit¹⁰.

Arrangements must be made at a centre for the education and training of each trainee according to his age and his personal needs as assessed and recorded in his training plan¹¹. Those arrangements must be such as ensure the participation of each trainee in education or training courses for at least 25 hours a week¹². The activities provided in respect of education and training must as far as practicable be such as will foster personal responsibility and a trainee's interests and skills and help him prepare for his return to the community¹³. Where the trainee is of compulsory school age the curriculum must be appropriate to his age, ability and aptitude and to any special educational needs he may have, and must so far as possible reflect the requirements of the National Curriculum¹⁴.

A library must be provided in every centre and, subject to any directions of the Secretary of State¹⁵, every trainee is to be allowed to have library books appropriate to his age and to exchange them¹⁶.

1 For the meaning of 'trainee' see PARA 672 note 2 ante.

2 Secure Training Centre Rules 1998, SI 1998/472, r 27(1). For the aims of secure training centres see PARA 674 ante. For the meaning of 'secure training centre' see PARA 657 ante.

3 Ibid r 27(2).

4 Ibid r 27(3)(a).

- 5 Ibid r 27(3)(b).
- 6 Ibid r 27(4)(a). As to supervision after release see PARA 689 post.
- 7 Ibid r 27(4)(b).
- 8 Or, in the case of a contracted-out secure training centre (see PARA 658 et seq ante), the director: see ibid r 46(2); and PARA 672 ante. As to directors see PARA 659 ante.
- 9 Ibid r 27(5).
- 10 Ibid r 27(6). As to the provision of medical services see PARA 679 ante.
- 11 Ibid r 28(1).
- 12 Ibid r 28(2).
- 13 Ibid r 28(3).
- 14 Ibid r 28(4). As to compulsory school age and the National Curriculum see the Education Act 1996; and EDUCATION vol 15(1) (Reissue) PARA 13; EDUCATION vol 15(2) (2006 Reissue) PARA 916 et seq.
- 15 As to the Secretary of State see PARA 505 ante.
- 16 Secure Training Centre Rules 1998, SI 1998/472, r 21.

UPDATE

686 Regime activities and education

TEXT AND NOTE 2--Programmes designed to tackle offending behaviour are now restricted to convicted trainees: SI 1998/472 r 27(1) (amended by SI 2003/3005). For the meaning of 'convicted trainee' see PARA 672 NOTE 13.

TEXT AND NOTE 4--Head (1) applies also to an unconvicted trainee: SI 1998/472 r 27(3)(a) (amended by SI 2003/3005).

TEXT AND NOTES 6, 7--Under head (a), consultation is to be with (i) in the case of a convicted trainee, the services responsible for the trainee's supervision after release, and (ii) in the case of an unconvicted trainee, an officer of the local authority which is looking after the trainee within the meaning of the Children Act 1989 s 22(1) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 867); and head (b) applies in all cases: SI 1998/472 r 27(4) (amended by SI 2003/3005).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/687. Religion.

687. Religion.

The governor¹ must ensure that each trainee² is enabled to receive instruction in, and observe any requirement (whether as to dress, diet, or otherwise) of, the religious denomination stated in the record³ as the one to which he belongs⁴.

1 Or, in the case of a contracted-out secure training centre (see PARA 658 et seq ante), the director: see the Secure Training Centre Rules 1998, SI 1998/472, r 46(2); and PARA 672 ante. For the meaning of 'secure training centre' see PARA 657 ante. As to directors see PARA 659 ante.

2 For the meaning of 'trainee' see PARA 672 note 2 ante.

3 The record refers to the record made on a trainee's reception of the religious denomination to which he declares himself to belong: see the Prison Act 1952 s 10(5).

4 Secure Training Centre Rules 1998, SI 1998/472, r 26.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/688. Maintenance of order and discipline.

688. Maintenance of order and discipline.

Order and discipline must be maintained in a secure training centre¹, but with no more restriction than is required in the interests of security and well-ordered community life². In the control of trainees³, officers must seek to influence them through their own example and leadership and to enlist their willing co-operation⁴.

In addition to being searched at reception⁵, a trainee may be searched as the governor⁶ thinks necessary⁷. A trainee must be searched in as seemly a manner as is consistent with discovering anything concealed⁸. No trainee is to be stripped and searched without the authority of the governor, or in the presence of more than two officers, or in the sight of another trainee or in the sight or presence of an officer not of the same sex⁹. Where a strip search is conducted in respect of a trainee a written record is to be kept which must specify his name, the reason for the search, the time it was carried out, the person who authorised it, the person who carried it out and what, if anything, was found as a result¹⁰. In the case of a contracted-out secure training centre, the monitor¹¹ must be informed of any strip search within 24 hours of it having taken place and must be provided with a copy of the record¹².

The governor may confiscate any unauthorised article found in the possession of a trainee after his reception into a centre, or concealed or deposited within the centre¹³.

Where it appears to be necessary, in the interests of preventing him from causing significant harm to himself or to any other person or significant damage to property, that a trainee should not associate with other trainees, either generally or for particular purposes, the governor may arrange for the trainee's removal from association accordingly¹⁴. He must not do so unless all other appropriate methods of control have been applied without success¹⁵. Where a trainee is placed in his own room during normal waking hours as a consequence of having been removed from association¹⁶ he must:

- 315 (1) be observed at least once in every 15 minutes¹⁷;
- 316 (2) not be left unaccompanied during normal waking hours for a continuous period of more than 3 hours nor for periods which total in aggregate more than 3 hours in any period of 24 hours¹⁸;
- 317 (3) be released from the room as soon as it is no longer necessary¹⁹ for him to be removed from association²⁰; and
- 318 (4) be informed both orally and in writing of the reasons for such placement²¹.

In respect of every such removal from association a record must be kept which must specify:

- 319 (a) the name of the trainee²²;
- 320 (b) the date and time removal commenced and finished²³;
- 321 (c) who authorised it²⁴;
- 322 (d) the reasons for it and that the trainee was informed of those reasons²⁵;
- 323 (e) any observations made on the occasions when he was observed under head (1) above²⁶,

and the record must be made available on request to the person authorised to inspect the centre²⁷. In the case of a contracted-out secure training centre, the monitor must be notified of

any removal from association within 24 hours of its commencement and must be provided with a copy of the record²⁸.

Force may be used by officers in secure training centres in the same circumstances and to the same extent as in prisons²⁹. No trainee is to be physically restrained save where necessary for the purpose of preventing him from:

- 324 (i) escaping from custody³⁰;
- 325 (ii) injuring himself or others³¹;
- 326 (iii) damaging property³²;
- 327 (iv) inciting another trainee to injure himself or others or to damage property³³,

and then only where no alternative method of securing that purpose is available³⁴. No trainee may be physically restrained except in accordance with methods approved by the Secretary of State³⁵ and by an officer who has undergone a course of training which is so approved³⁶. Within 12 hours of a restraint, particulars must be recorded³⁷ and, in the case of a contracted-out secure training centre, the monitor must be notified of the restraint³⁸.

The prohibition of the conveyance of articles into or out of a secure training centre, with the power of confiscation, is in the same terms as that affecting prisons³⁹.

1 For the meaning of 'secure training centre' see PARA 657 ante.

2 Secure Training Centre Rules 1998, SI 1998/472, r 31(1).

3 For the meaning of 'trainee' see PARA 672 note 2 ante.

4 Secure Training Centre Rules 1998, SI 1998/472, r 31(2).

5 See *ibid* r 33(1); and PARA 675 ante.

6 Or, in the case of a contracted-out secure training centre, the director: see *ibid* r 46(1), (2); and PARA 672 ante. As to contracted-out secure training centres see PARA 658 *et seq* ante. As to the director see PARA 659 ante.

7 See *ibid* r 33(1).

8 *Ibid* r 33(2).

9 *Ibid* r 33(3).

10 *Ibid* r 33(4).

11 For the meaning of 'monitor' see PARA 659 ante.

12 Secure Training Centre Rules 1998, SI 1998/472, rr 33(5), 46(11).

13 *Ibid* r 35(3). See further PARA 675 ante.

14 *Ibid* r 36(1).

15 *Ibid* r 36(2).

16 *Ibid* r 36(3).

17 *Ibid* r 36(3)(a).

18 *Ibid* r 36(3)(b).

19 *Ie* necessary for the purposes for which he was removed from association under *ibid* r 36(1).

20 *Ibid* r 36(3)(c).

- 21 Ibid r 36(3)(d). As to persons authorised to inspect the centre see PARA 690 post.
- 22 Ibid r 36(4)(a).
- 23 Ibid r 36(4)(b).
- 24 Ibid r 36(4)(c).
- 25 Ibid r 36(4)(d).
- 26 Ibid r 36(4)(e).
- 27 Ibid r 36(4).
- 28 Ibid rr 36(5), 46(12).
- 29 See ibid r 37(1). No officer may act deliberately in a manner calculated to provoke a trainee: r 37(2). As to the use of force in prisons see PARA 589 ante.
- 30 Ibid r 38(1)(a).
- 31 Ibid r 38(1)(b).
- 32 Ibid r 38(1)(c).
- 33 Ibid r 38(1)(d).
- 34 Ibid r 38(1).
- 35 As to the Secretary of State see PARA 505 ante.
- 36 Secure Training Centre Rules 1998, SI 1998/472, r 38(2).
- 37 See ibid r 38(3). As to restraints in prisons see PARA 595 ante.
- 38 See ibid rr 38(3), 46(13).
- 39 See ibid r 40. As to prohibited articles in prisons see PARA 604 ante.

UPDATE

688 Maintenance of order and discipline

TEXT AND NOTE 14--SI 1998/472 r 36(1) amended: SI 2007/1709. It has been held that there were various procedural defects relating to the passing of SI 2007/1709: *R (on the application of C (a minor)) v Secretary of State for Justice* [2008] EWCA Civ 882, [2009] QB 657, [2008] All ER (D) 316 (Oct).

TEXT AND NOTES 30-34--SI 1998/472 r 38(1) amended: SI 2007/1709.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/689. Release, transfer and supervision.

689. Release, transfer and supervision.

An offender who is detained in a secure training centre pursuant to a secure training order is liable to be so detained for one half of the total period specified by the court in making the order¹.

Where the circumstances of the case require, the Secretary of State² may transfer an offender from a secure training centre to such other place and on such conditions as he may direct, or as he may make arrangements with a local authority, voluntary organisation or person carrying on a registered children's home³. Where an offender is so transferred the period of detention in the secure training centre under the order must be reduced by the period spent by the offender in such a place⁴.

Where the Secretary of State is satisfied that exceptional circumstances exist which justify the offender's release on compassionate grounds he may release the offender from the secure training centre; and the offender must, on his release, be subject to supervision for the remainder of the term of the order⁵.

Upon his release an offender must be under the supervision of a probation officer, a social worker of a local authority social services department or such other person as the Secretary of State may designate⁶. The offender must be given a notice from the Secretary of State specifying (1) the category of person for the time being responsible for his supervision; and (2) any requirements with which he must for the time being comply⁷. The offender must be given such notice before he commences the period of supervision, and, in the event of an alteration in the category of person supervising him or the requirements with which he must comply, before such alterations take effect⁸.

A youth court has power, where it is satisfied that an offender has failed to comply⁹ with any requirements contained in a notice¹⁰ to:

- 328 (a) order the offender to be detained in a secure training centre for such period, not exceeding the shorter of three months or the remainder of the period of the secure training order, as the court may specify¹¹; or
- 329 (b) impose on the offender a fine not exceeding level 3 on the standard scale¹².

The release and supervision of persons detained in secure training centre pursuant to a detention and training order is the same as where such a person is released from a young offender institution¹³.

1 Criminal Justice and Public Order Act 1994 s 1(4). Sections 1-4 are repealed as from a day to be appointed by the Crime and Disorder Act 1998 ss 73(7)(b), 120(2), Sch 10. At the date at which this volume states the law no such day had been appointed. As to transitional provisions see s 116(1)-(3), (5). As to the calculation of the date at which a trainee has served half of the total period specified by the court in making the order see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 89 et seq. As to the replacement of secure training orders with detention and training orders see PARA 656 ante.

2 As to the Secretary of State see PARA 505 ante.

3 See the Criminal Justice and Public Order Act 1994 s 2(4), (5) (prospectively repealed: see note 1 supra). The circumstances of the case may require transfer, for example, if a trainee requires emergency hospital

treatment or psychiatric care (HC Official Report, SC B (Criminal Justice and Public Order Bill) col 165, 25 January 1994).

4 See the Criminal Justice and Public Order Act 1994 s 2(4) (prospectively repealed: see note 1 supra).

5 See *ibid* s 2(6) (prospectively repealed: see note 1 supra).

6 *Ibid* s 3(2) (prospectively repealed: see note 1 supra). The category of person to supervise a trainee may be determined from time to time by the Secretary of State: s 3(3) (prospectively repealed: see note 1 supra). Where the supervision is to be provided by a social worker of a local authority social services department, the social worker must be a social worker of the local authority within whose area the trainee resides for the time being: s 3(4) (prospectively repealed: see note 1 supra). Where the supervision is to be provided by a probation officer, the probation officer must be an officer appointed for or assigned to the petty sessions area within which the trainee resides for the time being: s 3(5) (prospectively repealed: see note 1 supra). As to the provision of social services by local authorities generally see the Local Authority Social Services Act 1970; and SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1005 et seq. As to the appointment of probation officers and the making of arrangements for the selection of an officer to supervise a person subject to supervision by a probation officer under a secure training order and the functions of probation officers see the Probation Service Act 1993. As to payment of the cost of supervision see the Criminal Justice and Public Order Act 1994 Act s 3(6), (12) (prospectively repealed: see note 1 supra); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 89 et seq.

7 *Ibid* s 3(7) (prospectively repealed: see note 1 supra). The notice might include the requirement that the trainee must reside at a particular address or must refrain from residing at a particular address: see the 556 HL (Official Report) (5th Series) col 1193, 5 July 1994. The Secretary of State may by statutory instrument make rules for regulating the supervision of offenders, and the power so to do includes the power to make provision in the rules by the incorporation by reference of provisions contained in other documents: Criminal Justice and Public Order Act 1994 Act ss 3(9), (10) (prospectively repealed: see note 1 supra). A statutory instrument making such rules is subject to annulment in pursuance of a resolution of either House of Parliament: s 3(11) (prospectively repealed: see note 1 supra).

8 See *ibid* s 3(8) (prospectively repealed: see note 1 supra).

9 A failure to comply includes a contravention: *ibid* s 4(5) (prospectively repealed: see note 1 supra).

10 As to the manner of bringing before the youth court a trainee who is suspected of failing to comply with the requirements contained in the notice see *ibid* s 4(1), (2) (prospectively repealed: see note 1 supra); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 89 et seq.

11 *Ibid* s 4(3) (prospectively repealed: see note 1 supra). As to powers to accommodate a trainee elsewhere following the imposition of such an order, where a place in a secure training centre is not immediately available see s 4(4) (prospectively repealed: see note 1 supra); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 89 et seq.

12 *Ibid* s 4(3) (prospectively repealed: see note 1 supra). As to the standard scale see PARA 517 note 4 ante.

13 See the Crime and Disorder Act 1998 ss 73-79; and PARA 656 ante. At the date at which this volume states the law the provisions of ss 73-79 had not come into effect, but it is thought that they will do so in Spring 2000, at which time the detention and training order will replace the secure training order in respect of, *inter alia*, the detention of offenders aged between 12 and 14 years.

UPDATE

689 Release, transfer and supervision

NOTE 1--Day now appointed for repeal of 1994 Act ss 1-4: SI 1999/3426.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/690. Inspection of centres.

690. Inspection of centres.

The Secretary of State¹ may cause any secure training centre² to be inspected by persons who are for the time being authorised to conduct inspections under the Children Act 1989³. Such an inspector may be accompanied by Her Majesty's Chief Inspector of Prisons or a person designated by him and by one or more of her Majesty's Inspectors of Schools in England⁴. Such persons may, when conducting an inspection, enter any part of the premises⁵, conduct interviews with any officer or trainee⁶, and examine any records relating to the centre⁷. Upon completion of the inspection they must report in writing to the Secretary of State and the report must be published in such manner as the Secretary of State may direct⁸.

1 As to the Secretary of State see PARA 505 ante.

2 For the meaning of 'secure training centre' see PARA 657 ante.

3 Secure Training Centre Rules 1998, SI 1998/472, r 43(1). The Children Act 1989 s 80 gives authority for such inspections: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 158.

4 Secure Training Centre Rules 1998, SI 1998/472, r 43(2).

5 Ibid r 43(3)(a).

6 Ibid r 43(3)(b). For the meaning of 'trainee' see PARA 672 note 2 ante.

7 Ibid r 43(3)(c).

8 Ibid r 43(4). See the 1998 report of the Social Services Inspectorate, 'Inspection of Medway Secure Training Centre'. The report was written following an inspection conducted in September 1998 together with officers from the Office for Standards in Education and Her Majesty's Inspectorate of Prisons.

UPDATE

690 Inspection of centres

TEXT AND NOTES--Her Majesty's Chief Inspector of Education, Children's Services and Skills ('the Chief Inspector') (see EDUCATION vol 15(2) (2006 Reissue) PARA 1167A.1) and the Secretary of State may make arrangements for the Chief Inspector to conduct inspections of secure training centres in England, on such terms, including terms as to payment of the Chief Inspector, as the Chief Inspector and Secretary of State may agree in the arrangements: Education and Inspections Act 2006 s 146.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(ii) Secure Training Centres/691. Appointment of independent persons.

691. Appointment of independent persons.

The Secretary of State¹ may appoint independent persons to visit a secure training centre². Any trainee³ may make representations to such a person; and for that purpose the governor must make arrangements for such a person to interview the trainee and to receive representations from him⁴. A person so appointed is entitled to have access to any records relating to the centre except that the medical records relating to any trainee or the personal records of any officer are not to be made available to him without the consent of the trainee or, as the case may be, officer concerned⁵. An independent person must draw to the attention of the Secretary of State any matter which is of concern to him⁶.

1 As to the Secretary of State see PARA 505 ante.

2 Secure Training Centre Rules 1998, SI 1998/472, r 44(1). For the meaning of 'secure training centre' see PARA 657 ante.

3 For the meaning of 'trainee' see PARA 672 note 2 ante.

4 Secure Training Centre Rules 1998, SI 1998/472, r 44(2). Cf the Board of Visitors in relation to prisons and young offender institutions, as to which see PARAS 511-513 ante.

5 Ibid r 44(3).

6 Ibid r 44(4).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(iii) Attendance Centres/692. Establishment of attendance centres.

(iii) Attendance Centres

692. Establishment of attendance centres.

The Secretary of State¹ may provide attendance centres where offenders under 21 years of age may be required by a court to attend and be given, under supervision, appropriate occupation or instruction at times which will not interfere with their normal school or working hours; and for this purpose the Secretary of State may make arrangements to use premises of a local authority or police authority². The Secretary of State may and has made rules for the regulation and management of attendance centres³.

1 As to the Secretary of State see PARA 505 ante.

2 See the Criminal Justice Act 1982 s 16 (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 267 et seq.

3 See the Criminal Justice Act 1982 s 16(3), (5). The Rules which have been made under this power and are in force at the date at which this volume states the law are the Attendance Centre Rules 1995, SI 1995/3281.

UPDATE

692-693 Establishment of attendance centres; Rules for attendance centres

TEXT AND NOTES--As to the power to search persons in attendance centres for weapons see PARA 693A.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(iii) Attendance Centres/693. Rules for attendance centres.

693. Rules for attendance centres.

The occupation and instruction given at an attendance centre¹ must include a programme of group activities designed to assist offenders to acquire or develop personal responsibility, self-discipline, skills and interests². The officer in charge must maintain a record in respect of each person required to attend³, showing:

- 330 (1) the number of hours specified in the attendance centre order⁴;
- 331 (2) every attendance or failure to attend⁵;
- 332 (3) the duration of each attendance⁶; and
- 333 (4) the commission by that person of any breach of these provisions and the manner in which it is dealt with⁷.

It is the duty of the officer in charge to ensure that any person attending at the centre who has not completed the period of attendance specified in the order is, before leaving the centre, informed both orally and in writing of the day and time when he is next required to attend at the centre, unless it is impracticable to give this information⁸.

Persons required to attend at a centre must attend on the first occasion at the time specified in the order, and, on any subsequent occasion, at such time as may be notified to them⁹ or, if no such notification has been given, at such time as may be notified to them in writing by or on behalf of the officer in charge¹⁰. On attending, such persons must report to, and place themselves under the direction of, the officer in charge¹¹.

The occasions of a person's attendance at a centre and the duration of each attendance must, so far as practicable, be so arranged by the officer in charge that the duration of attendance on any occasion is not less than one hour¹². Where a person without reasonable excuse attends at the centre later than the time at which he was required to attend, the officer in charge may refuse to admit him; in such a case, the person is to be regarded as having failed to attend on that occasion, and must either (a) be instructed¹³ as to his further attendance at the centre¹⁴, or (b) informed both orally and in writing that he is not required to attend at the centre again and that it is intended in respect of the failure to attend at the required time to take steps to bring him before a court¹⁵. No person other than a person on an occasion when he is required to attend in pursuance of an order, may be admitted to or remain in a centre, except with the permission of the Secretary of State or the officer in charge¹⁶.

The officer in charge may at any time require a person attending at the centre to leave it if, in the opinion of that officer, that person is so unwell as to be unfit to remain at the centre on that occasion, or is suffering from any infectious disease, or is otherwise in a condition likely to be detrimental to other persons attending at the centre¹⁷. Where a person is so required to leave, he must be instructed¹⁸ as to his further attendance at the centre¹⁹.

The discipline of a centre is to be maintained by the personal influence of the officer in charge and other members of the staff²⁰. While attending at a centre, persons must behave in an orderly manner, and obey any instructions given by the officer in charge or any other member of staff²¹. The officer in charge may at any time require any person committing a breach of these provisions to leave the centre²². Where a person is required to leave, he must either (i) be instructed²³ as to his further attendance at the centre²⁴; or (ii) be informed both orally and in

writing that he is not required to attend at the centre again and that it is intended in respect of the breach to take steps to bring him before a court²⁵.

Where a person who appears to the court to have attained the age of 18 is ordered²⁶ to attend at an attendance centre in default of payment of a sum on money, the whole of that sum may be paid to the clerk of the court which made the order²⁷, or the whole or part of that sum may be paid to the officer in charge of the attendance centre specified in the order²⁸.

1 Ie as provided by the Secretary of State under the Criminal Justice Act 1982 s 16(1): Attendance Centre Rules 1995, SI 1995/3281, r 3. See also PARA 692 ante.

2 Ibid r 4(1). A female member of staff must, save in exceptional circumstances, always be in attendance at a centre which is available for the reception of female offenders, and female offenders attending at a centre must, at any time when participating in physical training, so far as practicable be supervised by a female member of staff: r 4(2).

3 Ibid r 5(1). 'Officer in charge' means the member of staff for the time being in charge of a centre: see *ibid* r 3. 'Member of staff' means any person for the time being carrying out any instructional or supervisory duties at a centre: r 3.

4 Ibid r 5(1)(a). An attendance centre order is made by a court under the Criminal Justice Act 1982 s 17 (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 267 et seq); the Children and Young Persons Act 1969 s 15(3)(a) (as amended); or the Criminal Justice Act 1991 s 14(1), Sch 2 Pt II (as amended) : see the Attendance Centre Rules 1995, SI 1995/3281, r 3.

5 Ibid r 5(1)(b).

6 Ibid r 5(1)(c).

7 Ibid r 5(1)(d).

8 Ibid r 5(2).

9 Ie in accordance with *ibid* r 5(2): see note 8 supra.

10 Ibid r 6(1)(a), (b).

11 Ibid r 6(1).

12 Ibid r 6(2).

13 Ie in accordance with *ibid* r 5(2): see note 8 supra.

14 Ibid r 6(3)(a).

15 Ibid r 6(3)(b). Such a person is brought before the court under the Criminal Justice Act 1982 s 19(1) (as amended).

16 Attendance Centre Rules 1995, SI 1995/3281, r 7.

17 Ibid r 8(1). In these circumstances, the officer in charge must not count towards the duration of a person's attendance on that occasion, the period following the requirement to leave: r 12.

18 Ie in accordance with *ibid* r 5(2): see note 8 supra.

19 Ibid r 8(2).

20 Ibid r 9.

21 Ibid r 10.

22 Ibid r 11(1). In these circumstances, the officer in charge must not count towards the duration of a person's attendance on that occasion, the period following the requirement to leave: r 12.

23 Ie in accordance with *ibid* r 5(2): see note 8 supra.

24 Ibid r 11(2)(a).

25 Ibid r 11(2)(b). A person is brought before the court under the Criminal Justice Act 1982 s 19(1) (as amended). Alternatively, the officer in charge or any other member of staff may deal with a person committing a breach of these provisions in either or both of the following ways, namely by (1) separating him from other persons attending at the centre; or (2) giving him an alternative form of occupation, during the whole or any part of the period of attendance specified in the order which remains uncompleted: Attendance Centre Rules 1995, SI 1995/3281, r 13.

26 He ordered under the Criminal Justice Act 1982 s 17 (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 267 et seq).

27 Magistrates' Courts (Attendance Centre) Rules 1992, SI 1992/2069, r 3(1)(a). Upon receiving such a payment the clerk must immediately notify the officer in charge: r 3(3).

28 Ibid r 3(1)(b). The officer in charge may not accept a part payment that would not secure the reduction by one or more complete hours of the period of attendance specified in the order: r 3(2) The officer in charge must pay any money received by him under r 3(1) to the clerk and must note the receipt of the money in the register maintained at the attendance centre: r 3(4).

UPDATE

692-693 Establishment of attendance centres; Rules for attendance centres

TEXT AND NOTES--As to the power to search persons in attendance centres for weapons see PARA 693A.

693 Rules for attendance centres

NOTE 1--1982 Act s 16(1) repealed: Powers of Criminal Courts (Sentencing) Act 2000 Sch 12 Pt 1.

NOTES 4, 26--1982 Act s 17 repealed: 2000 Act Sch 12 Pt 1.

NOTE 4--1991 Act s 14(1), Sch 2 Pt II repealed: 2000 Act Sch 12 Pt 1.

NOTES 15, 25--1982 Act s 19(1) repealed: 2000 Act Sch 12 Pt 1.

NOTES 27, 28--For 'clerk' read 'designated officer': SI 1992/2069 r 3(3), (4) (amended by SI 2001/615, SI 2005/617).

TEXT AND NOTE 27--For 'clerk of the court' read 'designated officer': SI 1992/2069 r 3(1) (a) (amended by SI 2001/615, SI 2005/617).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/3. PARTICULAR ESTABLISHMENTS/(2) TYPES OF PRISON ESTABLISHMENTS FOR YOUNG OFFENDERS/(iii) Attendance Centres/693A. Power to search persons in attendance centres for weapons.

693A. Power to search persons in attendance centres for weapons.

A member of staff of an attendance centre¹ who has reasonable grounds for suspecting that a relevant person² may have with him or in his possessions³ (1) an article to which the Criminal Justice Act 1988⁴ applies (knives and blades etc), or (2) an offensive weapon⁵, may search the relevant person or his possessions for such articles and weapons⁶. A search under these provisions may be carried out only where the member of staff and the relevant person are on the premises of the attendance centre⁷. A person may carry out a search under these provisions only if (a) he is the officer in charge⁸ of the attendance centre; or (b) he has been authorised by the officer in charge to carry out the search⁹. A person who carries out a search of a relevant person under these provisions (i) may not require the relevant person to remove any clothing other than outer clothing¹⁰; (ii) must be of the same sex as the relevant person; and (iii) may carry out the search only in the presence of another member of staff who is also of the same sex as the relevant person¹¹. A relevant person's possessions may not be searched under these provisions except in his presence and in the presence of another member of staff¹². If, in the course of a search under these provisions, the person carrying out the search finds (A) anything which he has reasonable grounds for suspecting falls within head (1) or (2) above, or (B) any other thing which he has reasonable grounds for suspecting is evidence in relation to an offence, he may seize and retain it¹³. A person who exercises a power under these provisions may use such force as is reasonable in the circumstances for exercising that power¹⁴. The Police (Property) Act 1897 (disposal of property in the possession of the police) applies to property which has come into the possession of a police constable under these provisions as it applies to property which has come into the possession of the police in the circumstances mentioned in the Police (Property) Act 1897¹⁵.

The powers conferred by the above provisions are in addition to any powers exercisable by the member of staff of an attendance centre in question apart from the above provisions and are not to be construed as restricting such powers¹⁶.

1 In the Violent Crime Reduction Act 2006 s 47 'attendance centre' has the same meaning as in the Criminal Justice Act 2003 Pt 12 (see 2003 Act s 221); 2006 Act s 47(11).

2 'Relevant person', in relation to an attendance centre, means a person who is required to attend at that centre by virtue of (1) a relevant order (within the meaning of the Criminal Justice Act 2003 s 196); or (2) a youth rehabilitation order under the Criminal Justice and Immigration Act 2008 Pt 1 (ss 1-8); 2006 Act s 47(11) (amended by Criminal Justice and Immigration Act 2008 Sch 4 para 98).

3 'Possessions', in relation to a person, includes any goods over which he has or appears to have control: Violent Crime Reduction Act 2006 s 47(11).

4 Ie the Criminal Justice Act 1988 s 139.

5 Within the meaning of the Prevention of Crime Act 1953.

6 2006 Act s 47(1).

7 Ibid s 47(2).

8 'Officer in charge', in relation to an attendance centre, means the member of staff for the time being in charge of that centre: ibid s 47(11).

9 Ibid s 47(3). An authorisation for the purposes of head (b) in the text may be given either in relation to a particular search or generally in relation to searches under s 47 or to a particular description of such searches: s 47(10).

10 'Outer clothing' means (1) any item of clothing that is being worn otherwise than wholly next to the skin or immediately over a garment being worn as underwear; or (2) a hat, shoes, boots, gloves or a scarf: ibid s 47(11).

11 Ibid s 47(4).

12 Ibid s 47(5).

13 Ibid s 47(6). A person who seizes anything under s 47(6) must deliver it to a police constable as soon as reasonably practicable: s 47(8).

14 Ibid s 47(7).

15 Ibid s 47(9).

16 Ibid s 47(12).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/4. UNCONVICTED PRISONERS/(1) GENERAL PROVISIONS/694. Class of unconvicted prisoners.

4. UNCONVICTED PRISONERS

(1) GENERAL PROVISIONS

694. Class of unconvicted prisoners.

The class of unconvicted prisoners¹ comprises (1) persons committed for trial²; (2) persons committed by examining justices or by a magistrates' court pending or during the hearing of an information or complaint³, except on an adjournment after conviction and before sentence; (3) certain aliens and non-patrials who have been detained⁴ either pending removal as illegal immigrants or pending deportation⁵; (4) persons awaiting extradition or return as fugitive offenders⁶; (5) certain persons committed for contempt of court⁷ and civil prisoners⁸; and (6) servicemen received into prison under a service sentence of a week or less⁹.

1 For the meaning of 'unconvicted prisoner' for the purposes of the Prison Rules 1999, SI 1999/728, see PARA 536 note 2 ante.

2 As to committal proceedings see SENTENCING AND DISPOSITION OF OFFENDERS.

3 Such persons are committed under the Magistrates' Courts Act 1980 s 10(3) or s 30(1): see MAGISTRATES.

4 He detained under the Immigration Act 1971 s 4(2)(d), Sch 2 para 16 (as amended): see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 156. See also *Zamir v Secretary of State for the Home Department* [1980] AC 930, [1980] 2 All ER 768, HL. As to the grounds upon which foreign nationals can be detained under the Immigration Act 1971 see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 166. As to illegal immigrants, deportees and fugitive offenders generally see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM; EXTRADITION; and PARA 698 post.

5 As to detention pending deportation see the Immigration Act 1971 s 5(5), Sch 3 para 2 (as amended); and BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 166.

6 See EXTRADITION.

7 As to contempt prisoners see PARA 699 post. As to contempt of court generally see CONTEMPT OF COURT.

8 As to civil prisoners see PARA 700 post.

9 See the Army Act 1955 s 129(2); the Air Force Act 1955 s 129(2); the Naval Discipline Act 1957 s 107(1) (b). See also PARA 638 ante; and ARMED FORCES.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/4. UNCONVICTED PRISONERS/(1) GENERAL PROVISIONS/695. Status at common law and by statute.

695. Status at common law and by statute.

A clear distinction is maintained, both at common law and by statute, between (1) the treatment of unconvicted prisoners who, pending their detention in prison exclusively for safe custody, are presumptively innocent of crime¹; and (2) the treatment of convicted prisoners who during the period of their detention in prison have been convicted of crime and are detained for the purpose of punishment. To secure the observance of this distinction special rules must be made for unconvicted prisoners regulating their confinement for safe custody only; these rules must be framed in such manner as to make it as little as possible oppressive, due regard being paid only to their safe custody, to the necessity of preserving order and good government in the place of confinement, and to the physical and moral well-being of the prisoners themselves². The object of detaining an unconvicted prisoner is to ensure his attendance at remand hearings and committal proceedings before examining justices, and to secure appearance at his trial. In respect of those comprised in the class of unconvicted prisoners who are subject to *refoulement*, deportation or extradition, the object of detention is to ensure their attendance for the purpose of removal from the country. The fact that the liberty of unconvicted prisoners has been lawfully curtailed does not justify any other unlawful encroachment unless sanctioned by the relevant statute or statutory instrument³. Like a convicted prisoner, an unconvicted prisoner retains all his personal rights not temporarily taken away by statutory provision or necessarily inconsistent with the circumstances in which he has been lawfully placed⁴. The unconvicted prisoner may bring proceedings for judicial review in respect of any improper treatment, including any violation of the special statutory provisions accorded to unconvicted prisoners⁵.

1 As to the presumption of innocence see CIVIL PROCEDURE vol 11 (2009) PARA 1099; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1369.

2 The special legal status of unconvicted prisoners was so expressed in the Prison Act 1877 s 39 (repealed). Although not repeated in later legislation, the principles stated are implicit in the requirement upon the Secretary of State under the Prison Act 1952 s 47(4)(d) (as amended) (see PARA 502 ante) to make special rules for the treatment of unconvicted prisoners. The omission of expression of such principles is due to the practice of parliamentary draftsmen to exclude legislative preambles or recitals from statutory provisions. As to the Secretary of State see PARA 505 ante.

3 I.e. the Prison Act 1952; and the Prison Rules 1999, SI 1999/728.

4 *Raymond v Honey* [1983] 1 AC 1, [1982] 1 All ER 756, HL. Thus where a right is restricted and the object of that restriction is not consonant with the grounds for the detention of an unconvicted prisoner, it would appear that such a restriction is ultra vires. As to prisoners' rights see PARA 562 et seq ante.

5 *Whittaker v Roos*, *Morant v Roos* [1912] App D 92 at 121-123 (SA) per Innes JA, and at 128 per Solomon JA; cf at 114 per de Villiers CJ. Any unjustifiable interference with the rights of an unconvicted prisoner may also violate the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (see PARA 504 ante).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/4. UNCONVICTED PRISONERS/(2) PARTICULAR CLASSES OF UNCONVICTED PRISONERS/696. Prisoners awaiting trial.

(2) PARTICULAR CLASSES OF UNCONVICTED PRISONERS

696. Prisoners awaiting trial.

Unconvicted prisoners¹ must be kept out of contact with convicted prisoners as far as the governor considers it can reasonably be done, unless and to the extent that they have consented to share residential accommodation or participate in any activity with convicted prisoners². In no circumstances must they be required to share a cell with a convicted prisoner³. As with convicted prisoners, the unconvicted prisoner must not be deprived unduly of the society of other unconvicted prisoners or other persons not being convicted prisoners⁴. The unconvicted prisoner must not be detained in a wrong place, in a manifestly unauthorised manner or in a manner plainly inconsistent with his status as a prisoner awaiting some disposal such as trial or removal from the country⁵. Prisoners awaiting trial are subject to prison disciplinary measures in the same way as convicted prisoners⁶.

1 For the meaning of 'unconvicted prisoner' see PARA 536 note 2 ante.

2 See the Prison Rules 1999, SI 1999/728, r 7(2)(a); and PARA 536 ante.

3 Ibid r 7(2)(b).

4 See ibid r 7(4); and PARA 536 ante. Formerly, under the Prison Rules 1949, SI 1949/1073, r 106 (revoked), it was provided that restriction on association with other unconvicted prisoners was limited to what was necessary to prevent contamination or conspiracy to defeat the ends of justice. The latter restriction is applied from time to time in compliance with the discretion not to deprive an unconvicted prisoner of association unduly.

5 *Rossouw v Sachs* 1964 (2) SA 551 at 560 (AD) per Ogilvie Thompson JA. An unconvicted prisoner whose detention, with the authority of the governor, does not comply with the requirements of the prison rules by eg being required to share a cell with a convicted prisoner, is not thereby falsely imprisoned, nor does he have a claim for breach of statutory duty: *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1992] 1 AC 58, sub nom *Hague v Deputy Governor of Parkhurst Prison* [1991] 3 All ER 733, HL. He will be entitled to bring proceedings for judicial review.

6 For example, where an offence against discipline is committed by a prisoner who is detained only on remand, additional days may be awarded notwithstanding that the prisoner has not (or had not at the time of the offence) been sentenced: Prison Rules 1999, SI 1999/728, r 59(1). However, such an award of additional days has effect only if the prisoner subsequently becomes a short term or long term prisoner whose sentence is reduced, under the Criminal Justice Act 1967 s 67 (as amended) by a period which includes the time when the offence against discipline was committed: r 59(2).

UPDATE

696 Prisoners awaiting trial

NOTE 6--For 'short term or long term prisoner' read 'short term or long term prisoner or fixed term prisoner'; and reference to Criminal Justice Act 1967 s 67 is now to Criminal Justice Act 1967 s 67 or the Criminal Justice Act 2003 s 240: SI 1999/728 r 59(2) (amended by SI 2005/3437).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/4. UNCONVICTED PRISONERS/(2) PARTICULAR CLASSES OF UNCONVICTED PRISONERS/697. Special facilities.

697. Special facilities.

Unconvicted prisoners are entitled to certain special facilities¹. An unconvicted prisoner may wear his own clothing if and in so far as it is suitable, tidy and clean, and may be permitted to arrange for the supply to him from outside prison of sufficient clean clothing². Subject to that right, the rules relating to the clothing of convicted prisoners apply likewise to unconvicted prisoners³. The right of an unconvicted prisoner to his own clothing may be forfeited if and for so long as there are reasonable grounds to believe that there is a serious risk of his attempting to escape, in which case an unconvicted prisoner may be required to wear clothing that is distinctive by virtue of being specially marked or coloured or both⁴. The Secretary of State⁵ may also require him to wear clothing provided by the prison for so long as the Secretary of State is of the opinion that the prisoner would, if he escaped, be highly dangerous to the public or the police or the security of the state⁶.

If the governor is satisfied that the request is reasonable, and unless the Secretary of State directs otherwise, an unconvicted prisoner may be visited and treated by a doctor or dentist at his own expense, in consultation with the prison medical officer⁷. Subject to any directions given in the particular case by the Secretary of State, a registered medical practitioner selected by or on behalf of a prisoner who is a party to any legal proceedings must be afforded reasonable facilities for examining him in connection with the proceedings, and may do so out of hearing but in the sight of an officer⁸. Communications made by an unconvicted prisoner to a psychiatrist for the purpose of reporting to the trial court on the prisoner's mental condition do not, however, give rise to a confidential relationship, and any such report may be admissible in evidence at trial⁹.

If he wishes, an unconvicted prisoner may work as if he were a convicted prisoner¹⁰. If he elects to work as a convicted prisoner, he receives payment at rates approved by the Secretary of State, either generally or in relation to particular cases¹¹.

Subject to any directions of the Secretary of State, an unconvicted prisoner may have supplied to him at his own expense, and may retain for his personal use, books, newspapers, writing materials and other means of occupation, except anything that appears objectionable to the Board of Visitors or, pending consideration by the Board, to the governor¹². However, forfeiture may result from an award for a disciplinary offence¹³.

An unconvicted prisoner may send and receive as many letters and receive as many visits as he wishes within such limits and conditions as the Secretary of State may direct, either generally or in a particular case¹⁴. An unconvicted prisoner is not entitled to receive a visit from any person, whether or not a relative or friend, during any period of time when that person is prohibited from visiting¹⁵ or any other person, other than a relative or friend, except with the leave of the Secretary of State¹⁶. These rights are unaffected by disciplinary proceedings, except that the governor may defer the right of a prisoner to a visit until the expiration of any period of cellular confinement¹⁷.

An unconvicted prisoner retains a right of access to the court and a right to a fair trial, despite his imprisonment, and where the conditions of his confinement prevent him from adequately preparing his defence he may, in appropriate cases, seek judicial review of the decision which is so adversely affecting him¹⁸. An unconvicted prisoner also retains the right to vote¹⁹.

¹ For the meaning of 'unconvicted prisoner' see PARA 536 note 2 ante. As to the regulation of unsentenced prisoners generally see the Prison Service Standing Order 8.

Many special facilities formerly provided for unconvicted prisoners (eg the right, on application and payment, to have special bedding and other articles) have been omitted from the Prison Rules 1999, SI 1999/728.

2 Ibid r 23(1).

3 See ibid r 23(2). As to the clothing of convicted prisoners see PARA 575 ante.

4 See ibid r 23(1)(a).

5 As to the Secretary of State see PARA 505 ante.

6 See the Prison Rules 1999, SI 1999/728, r 23(1)(b).

7 See ibid r 20(5).

8 Ibid r 20(6).

9 *R v Smith* [1979] 3 All ER 605, [1979] 1 WLR 1445, CA.

10 Prison Rules 1999, SI 1999/728, r 31(5).

11 See ibid r 31(6); and PARA 577 ante.

12 Ibid r 43(1). As to the Board of Visitors see PARAS 511-513 ante.

13 See ibid r 55(1)(g); and PARA 601 ante.

14 Ibid r 35(1). The right is subject to r 35(8) (see the text and note 16 infra): see r 35(1). This is not one of the privileges specifically mentioned as forfeitable as a punishment for an offence of discipline: see r 55; and PARA 601 ante.

15 Ie under ibid r 73 (see PARA 571 ante).

16 Ibid r 35(8).

17 Ibid r 35(5).

18 See *R v Secretary of State for the Home Department, ex p McAvoy* [1984] 3 All ER 417, [1984] 1 WLR 1408. See also *R v Secretary of State for the Home Department, ex p Quinn* (1999) 143 Sol Jo LB 136, Times, 17 April, DC.

19 See the Representation of the People Act 1983 s 3 (as amended); and ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) PARA 122. Convicted prisoners who have not been sentenced also retain the right to vote: see s 3 (as amended); and ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) PARA 122.

UPDATE

697 Special facilities

TEXT AND NOTE 7--Reference to medical officer now to a registered medical practitioner such as is mentioned in SI 1999/728 r 20(3) (see PARA 580): r 20(5) (amended by SI 2005/3437).

TEXT AND NOTE 12--Reference to Board of Visitors now to independent monitoring board (see PARA 511): SI 1999/728 r 43(1) (amended by SI 2008/597).

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/4. UNCONVICTED PRISONERS/(2) PARTICULAR CLASSES OF UNCONVICTED PRISONERS/698. Illegal immigrants, deportees and fugitive offenders.

698. Illegal immigrants, deportees and fugitive offenders.

The rules providing for the special treatment of unconvicted prisoners¹ apply likewise to persons who are not susceptible to the administration of criminal justice but who are detained pending removal out of the jurisdiction either by way of extradition or deportation². Additionally, a person who is liable to be deported or who is the subject of extradition proceedings may obtain release from prison by voluntarily leaving the country at his own expense or voluntarily surrendering himself to the authorities of the state requesting extradition. An illegal entrant may be detained by order of an immigration officer³, who may also effect the immigrant's release from prison by granting him temporary admission⁴ to, or giving him leave to enter, the United Kingdom, either for a limited or for an indefinite period⁵.

1 See PARA 697 ante.

2 Persons who are detained by reason only of a recommendation for deportation made by a court or under the authority of the Secretary of State or of an immigration officer will be treated as unconvicted prisoners for purposes of prison management except where particular provisions clearly cannot be applied to them or where there are specific instructions or guidance which apply to detainees: see the Prison Service Order 4630, issued 9 December 1998). As to the Secretary of State see PARA 505 ante.

3 See the Immigration Act 1971 s 4(2), Sch 2 paras 8, 9 (as amended); and BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 152. In holding detainees under this Act, the Prison Service is acting as the agent of the Immigration and Nationality Directorate (IND) of the Home Office. The IND has its own separate detention facilities which are operated by contracted-out security staff. Detainees under the Immigration Act 1971 are held in prison where the IND does not have sufficient capacity or where the detainee requires a higher level of security than can be provided in the IND detention facilities. As to the management of detainees under the Immigration Act 1971 see the Prison Service Order 4630, issued 9 December 1998; and note 2 supra.

4 See the Immigration Act 1971 Sch 2 para 21(1); and BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 212.

5 See *ibid* s 3(1)(b) (as amended); and BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 86. For the meaning of 'United Kingdom' see PARA 504 note 1 ante.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/4. UNCONVICTED PRISONERS/(2) PARTICULAR CLASSES OF UNCONVICTED PRISONERS/699. Contempt prisoners.

699. Contempt prisoners.

A prisoner committed or attached¹ for contempt of court has the same rights and privileges as an unconvicted prisoner in respect of medical services, clothing, correspondence and visits². While such prisoners are treated as a separate class of prisoners for the purposes of the rule relating to classification of prisoners³, they may be permitted voluntarily to associate with any other class of prisoners⁴. The process for releasing fine defaulters and contemnors is similar to that relating to determinate sentence prisoners, though subject to a number of modifications⁵. A civil prisoner detained in prison in default of payment of a sum of money may communicate with, and be visited at any reasonable time by, any relative or friend to arrange for payment in order to secure his release⁶.

1 The remedy of attachment, although not formally abolished, is now obsolete and in practice all cases of criminal contempt are punishable by committal: see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 502 et seq.

2 Prison Rules 1999, SI 1999/728, r 7(3)(c). As to these rights and privileges see PARA 697 ante.

3 See *ibid* r 7(3)(a). See also PARA 536 ante.

4 *Ibid* r 7(3)(b).

5 See the Criminal Justice Act 1991 s 45 (amended by the Crime and Disorder Act 1998 s 119, Sch 8 para 88). The Criminal Justice Act 1991 ss 33A, 34A (both as added), 35, 40 (as amended) do not apply: see s 45(1) (as so amended). Such prisoners must be released unconditionally as soon as they have served one-half of the period of committal if that period was for less than 12 months, or two-thirds if that period was for 12 months or more: see s 45(3) (as so amended). See also PARA 617 ante.

6 See the Prison Rules 1999, SI 1999/728, r 37; and PARA 569 ante.

UPDATE

699 Contempt prisoners

NOTE 5--1991 Act Pt II (ss 32-51) repealed: Criminal Justice Act 2003 s 303(a), Sch 37 Pt 7.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/4. UNCONVICTED PRISONERS/(2) PARTICULAR CLASSES OF UNCONVICTED PRISONERS/700. Civil prisoners.

700. Civil prisoners.

Since the virtual abolition in 1971 of imprisonment for civil debt¹, the only prisoners who are committed to prison civilly and not by way of criminal justice (other than by way of civil contempt) are maintenance defaulters and those in default of payment of taxes and rates. Rules must provide for the special treatment of civil prisoners². Civil prisoners have the same rights and privileges as unconvicted prisoners so far as medical services, clothing, and correspondence and visits are concerned³. For the purposes of classification they are treated as a separate class of prisoner⁴, though they may be permitted to associate with any other class of prisoners if they are willing to do so⁵. The provisions relating to early release for convicted prisoners apply to civil prisoners⁶. A civil prisoner detained in prison in default of payment of a sum of money may communicate with, and be visited at any reasonable time by, any relative or friend to arrange for payment in order to secure his release⁷.

1 See the Administration of Justice Act 1970 s 11 (amended by the Social Security Act 1973 s 100, Sch 27 para 85).

2 See the Prison Act 1952 s 47(4)(d) (as amended); and PARA 502 ante.

3 See the Prison Rules 1999, SI 1999/728, r 7(3)(c); and PARA 699 ante. As to the special facilities see PARA 697 ante.

4 Ibid r 7(3)(a).

5 Ibid r 7(3)(b).

6 See the Criminal Justice Act 1991 s 45 (amended by the Crime and Disorder Act 1998 s 119, Sch 8 para 88). See also PARA 617 ante. The provisions apply with the same modifications as apply to contemnors: see PARAS 617, 699 note 5 ante.

7 See the Prison Rules 1999, SI 1999/728, r 37; and PARA 569 ante.

Halsbury's Laws of England/PRISONS (VOLUME 36(2) (REISSUE))/4. UNCONVICTED PRISONERS/(3) REMAND CENTRES/701-800. Provision of remand centres.

(3) REMAND CENTRES

701-800. Provision of remand centres.

The Secretary of State¹ may provide remand centres for the detention of persons not less than 14 but under 21 years who are remanded or committed in custody for trial or sentence². The Secretary of State may from time to time direct (1) that a woman aged 21 years or over who is serving a sentence of imprisonment or who has been committed to prison for default is to be detained in a remand centre or a young offender institution³ instead of a prison⁴; (2) that a woman aged 21 years or over who is remanded in custody or committed in custody for trial or sentence is to be detained in a remand centre instead of a prison⁵; (3) that a person under 21 but not less than 17 years of age who is remanded in custody or committed in custody for trial or sentence is to be detained in a prison instead of a remand centre or a remand centre instead of a prison⁶.

Any person required to be detained in a penal institution may be detained in a remand centre for any temporary purpose and a person aged 18 years or over may be detained in such a centre for the purpose of providing maintenance and domestic services for that centre⁷.

The same provisions of the Prison Act 1952 that apply to young offender institutions apply to remand centres⁸. The Secretary of State may make rules for the regulation and management of remand centres and for the classification, treatment, employment, discipline and control of persons detained in them⁹. For these purposes, any disciplinary offence against the rules committed by the detainee may be treated as committed in the remand centre in which he is for the time being confined¹⁰. The Secretary of State may also make rules providing for the temporary release of persons detained in a remand centre¹¹.

1 As to the Secretary of State see PARA 505 ante.

2 Prison Act 1952 s 43(1)(a) (s 43 substituted by the Criminal Justice Act 1982 s 11). At the date at which this volume states the law there are eight male remand centres (Brixton, Cardiff, Feltham, Leeds, Lincoln, Liverpool, Northallerton, Reading) and one female (Eastwood Park).

3 As to young offender institutions see PARAS 643-656 ante.

4 Prison Act 1952 s 43(2)(a) (as substituted (see note 2 supra); and amended by virtue of the Criminal Justice Act 1988 s 123, Sch 8).

5 Prison Act 1952 s 43(2)(b) (as substituted: see note 2 supra).

6 Ibid s 43(2)(c) (as substituted: see note 2 supra). Such a person may be so detained notwithstanding anything in the Criminal Justice Act 1948 s 27 (as substituted and amended) or the Children and Young Persons Act 1969 s 23(3) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1247): Prison Act 1952 s 43(2)(c) (as so substituted).

7 Ibid s 43(3) (as substituted (see note 2 supra); and amended by the Criminal Justice Act 1988 s 170(1), Sch 15 para 12; and the Criminal Justice Act 1991 s 68, Sch 8 para 2).

8 See the Prison Act 1952 s 43(4), (5), (6), (7) (as substituted: see note 2 supra); and PARA 643 ante.

9 Ibid s 47(1) (as amended). See also PARAS 501-502 ante.

10 See the Criminal Justice Act 1961 s 23(1), (4) (as amended); and PARA 597 ante. At the date at which this volume states the law no rules have been made in respect of remand centres.

11 Prison Act 1952 s 47(5) (amended by the Criminal Justice Act 1961 s 41(1), (3), Sch 4; and the Criminal Justice Act 1982 s 77, Sch 14 para 7(b)).

UPDATE

701-800 Provision of remand centres

TEXT AND NOTES 1, 2--The application of the Prison Act 1952 to a person on whom a custodial sentence (within the meaning of the Armed Forces Act 2006) (see s 374) has been passed in respect of a service offence (within the meaning of the 2006 Act) is not affected by the omission from the Prison Act 1952 s 43(1) of a reference to that sentence: s 43(8) (added by the Armed Forces Act 2006 Sch 16 para 17).

TEXT AND NOTE 9--Certain functions under the Prison Act 1952 s 47, so far as exercisable in relation to Wales, transferred to the Welsh Ministers: see PARA 672.